

No. 12828

United States
Court of Appeals
for the Ninth Circuit.

ALICE McCOURT LAMM,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

MAR 22 1951

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner :

SIGVALD NIELSON, ESQ.,

HARRY R. HORROW, ESQ.,

ALBERT G. SHULTS, ESQ.,

FRANCIS N. MARSHALL, ESQ.

For Respondent :

T. M. MATHER, ESQ.

The Tax Court of the United States

Docket No. 21724

ALICE McCOURT LAMM,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1949

Feb. 7—Petition received and filed. Taxpayer notified. Fee paid.

Feb. 8—Copy of petition served on General Counsel.

Feb. 7—Request for Circuit hearing in San Francisco filed by taxpayer. 3/3/49 Granted.

Mar. 15—Answer filed by General Counsel.

Mar. 15—Request for hearing in Portland, Oregon, filed by General Counsel. 3/16/49 Denied.

Mar. 17—Copy of answer served on taxpayer, San Francisco, Calif.

Sept. 9—Hearing set Nov. 7, 1949, San Francisco, Calif.

Nov. 15—Hearing had before Judge Harron, on merits. Proceedings consolidated for hearing #21725, 21726, 22126 to 22133, 22635 to 22638. Appearance of Francis N. Mar-

1949

shall filed. Stipulation of facts, with exhibits 1-A through 4-D filed. Joint motion to consolidate granted, copy served. Brief Jan. 13, 1950; replies Feb. 13, 1950.

Dec. 12—Transcript of hearing 11/15/49 filed.

1950

Jan. 11—Brief filed by taxpayer. Served 1/13/50.

Jan. 12—Brief filed by General Counsel. Served 1/13/50.

Feb. 13—Reply brief filed by taxpayer. Copy served.

Sept. 26—Findings of fact and opinion rendered, Harron, J. Decision will be entered for respondent. Copy served.

Sept. 26—Decision entered, Harron, J., Div. 13.

Dec. 26—Petition for review by U. S. Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Dec. 26—Proof of service filed.

1951

Jan. 16—Designation of contents of record on review, with proof of service thereon filed by taxpayer.

Jan. 24—Certified copy of order from U. S. Court of Appeals, Ninth Circuit, that petition-

1951

er's original Exhibit 8 be incorporated in the transcript of record on review in this case, and that a copy of this order be incorporated in the transcript of record on review, filed.

Jan. 24—Certified copy of order from U. S. Court of Appeals, Ninth Circuit, that the Clerk of this Court transmit a complete record in Dkt. No. 21724 and an abbreviated record in all the remaining cases to the U. S. Court of Appeals, Ninth Circuit; the complete record to be printed and the abbreviated cases to remain unprinted, filed.

The Tax Court of the United States
Docket No. 21724

ALICE McCOURT LAMM,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated November 26, 1948, bearing symbols

IT:90D:EEH, and as a basis for her petition alleges as follows:

1. Petitioner herein is Alice McCourt Lamm, an individual, residing at Modoc Point, Oregon. Petitioner filed her federal income and victory tax return and kept her books of account for the calendar year ended December 31, 1943, on a cash receipts and disbursements basis. Said return was filed with the Collector of Internal Revenue for the District of Oregon.

2. The taxes in dispute are proposed deficiencies in federal income and victory taxes for the calendar year 1943 in the amount of \$4,246.73.

3. The notice of deficiency, a copy of which is attached hereto marked "Exhibit A" and made a part of this petition, was mailed to petitioner on November 26, 1948.

4. The determination of taxes set forth in said notice of deficiency is based on the following errors:

(a) The Commissioner erred in determining that the gain of \$7,951.76 realized by petitioner on the retirement of notes of the Lamm Lumber Company was taxable as ordinary income rather than as a long term capital gain under the provisions of Section 117 of the Internal Revenue Code.

(b) The Commissioner erred in holding that said notes on which petitioner realized said gain were not in registered form at the time of retirement within the provisions of Section 117(f) of the Internal Revenue Code.

(c) The Commissioner erred in determining that there are due from petitioner deficiencies in income and victory taxes for the year 1943 in the amount of \$4,246.73.

5. The facts upon which petitioner relies as a basis for this petition are as follows:

(1) On and prior to July 1, 1941, Lamm Lumber Company, a corporation, engaged in the manufacture of lumber, had outstanding indebtedness in the amount of \$411,264.99, evidenced by its promissory notes bearing interest at the rate of 3 per cent per annum and secured by mortgages on certain of its properties. On said date said notes were owned by Southern Pacific Land Company, but were held in the name of Consolidated Securities Company, as trustee for said Southern Pacific Land Company.

(2) On July 1, 1941, petitioner and other persons purchased undivided interests in said notes and mortgages for the aggregate sum of \$205,632.50 and caused said notes and mortgages to be endorsed, transferred and delivered to American Trust Company, hereinafter referred to as the "Bank," as agent and registrar with respect to said notes. Thereupon, petitioner and each of said persons who made such purchase entered into an agreement with the Bank dated July 9, 1941, under the terms of which said notes and mortgages remained in the possession of the Bank until said notes were retired in 1943.

(3) The amount paid by petitioner for her participating interest in said notes and mortgages was

\$8,000, or 3.890436 per cent of the aggregate purchase price, and petitioner thereby owned a participating interest in said notes and mortgages in said percentage.

(4) Petitioner's participating interest was recorded on the list or register maintained by the Bank showing the owners of participating interests in said notes, and under the terms of the aforesaid agreement petitioner was entitled to receive said percentage of the principal and interest payments received on said notes by the Bank as long as she appeared on the records of the Bank as the owner of said participating interest.

(5) Petitioner did not transfer any portion of the participating interest so acquired by her and remained the owner thereof until said notes were retired.

(6) Said agreement was entered into with the knowledge and consent of Lamm Lumber Company and said corporation agreed to pay the Bank \$250 a year and a closing fee of \$250 for its services in acting as agent and registrar. The remaining portion of the fees of the Bank for such services was paid by the owners of participating interests.

(7) The Bank, under the terms of said agreement, was required to make and made disbursement of principal and interest payments received on said notes to petitioner and other persons owning participating interests therein, as shown on its register of owners of participating interests, and the Bank was under no duty to take notice of any change in the ownership of any participating interest unless

and until there was filed with the Bank such documentary evidence as it would deem necessary to establish such change.

(8) On December 7, 1943, said notes were retired by the payment of the balance of the principal due thereon. During the year 1943 petitioner realized a gain of \$7,951.76 on the retirement of said notes. At the time said notes were retired they were in registered form within the provisions of Section 117(f) of the Internal Revenue Code.

(9) Said gain received by petitioner was reported in her income and victory tax return for the calendar year 1943 as a long term capital gain, of which 50 per cent or \$3,975.88 was included in income. In arriving at the deficiencies involved in this proceeding respondent erroneously determined that said notes were not in registered form at the time of retirement and that said gain of \$7,951.76 was not taxable as a long term capital gain but was taxable as ordinary income.

Wherefore, petitioner prays that this court may hear this proceeding, redetermine the deficiency involved herein by correction of the errors alleged herein, and grant such other relief as may be proper.

Dated: San Francisco, California, January 28, 1949.

/s/ SIGVALD NIELSON,

/s/ HARRY R. HORROW,

/s/ ALBERT J. SHULTS,

Attorneys for Petitioner.

State of California,
City and County of San Francisco—ss.

Alice McCourt Lamm, being duly sworn, deposes and says that she is the petitioner named in the foregoing petition; that she has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ ALICE McCOURT LAMM.

Subscribed and sworn to before me this 28th day of January, 1949.

[Seal] /s/ CHALMER MUNDAY,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Oct. 29, 1949.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

November 26, 1948

Office of
Internal Revenue Agent in Charge
Seattle Division
305-A Jones Building
1331 Third Avenue

IT :90D :EEH

Mrs. Alice McCourt Lamm
Modoc Point, Oregon

Dear Mrs. Lamm:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$4,246.73, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:EEH. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,

Commissioner,

By L. D. HALLOWELL,

Acting Internal Revenue

Agent in Charge.

Enclosures:

Statement

Form of waiver

EEH:mhe

IT:90D:EEH

Statement

Mrs. Alice McCourt Lamm

Modoc Point, Oregon

Tax Liability for the Taxable Year Ended December 31, 1943

	Deficiency
Income Tax	\$4,246.73

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated March 1, 1947, and to your protest dated May 12, 1947.

A copy of this letter and statement has been mailed to your representative, Mr. H. Edwin Nowell, Crocker Building, San Francisco 4, California, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income		Victory Tax Net Income	
Net income as disclosed by return, Form 1040	\$46,682.06		\$44,699.32	
Unallowable deductions and additional income:				
(a) Ordinary gain	\$7,951.76		\$7,951.76	
(b) Partnership income	517.54	3,469.30	517.54	8,469.30
Total	\$55,151.36		\$53,168.62	
Nontaxable income and additional deductions:				
(c) Capital gain	\$3,975.88			
(d) Contributions	58.33	4,034.21		
Net income adjusted	\$51,117.15		\$53,168.62	

Explanation of Adjustments

- (a) Ordinary gain
(c) Capital gain

On your return for 1943 there was reported a long-term capital gain of \$3,975.88, being 50 per cent of the gain of \$7,951.76 realized by you through collection of notes of the Lamm Lumber Company in which you owned a participating interest of 3.890436%. You contend that such gain was derived from the retirement of notes or other evidences of indebtedness issued by a corporation in registered form, and therefore constitutes a capital gain under the provisions of Section 117(f), Internal Revenue Code. Information submitted indicates that you did not hold notes or other evidences of indebtedness in registered form and Section 117(f), Internal Revenue Code, does not apply to the loan transaction in which you participated. The amount of \$3,975.88 is eliminated from capital gains reported on your return, and there is included as ordinary income the amount of \$7,951.76 subject to both income and victory tax.

- (b) Partnership income

Your distributive share of the partnership income of Deschutes Lumber Co., amounting to \$44,972.37, was reported as \$44,454.83 on your return. Your income tax net income and victory tax net income are therefore increased by the difference of \$517.54 in the amounts shown.

- (d) Contributions

Your income tax net income is reduced \$58.33, representing the amount of allowable contributions not claimed as a deduction on your return.

Computation of Income and Victory Tax

Income tax net income adjusted.....	\$51,117.15
Less: Personal exemption	None
Surtax net income	\$51,117.15
Less: Earned income credit	300.00
Balance subject to normal tax.....	\$50,817.15
Normal tax at 6 per cent	\$ 3,049.03
Surtax on \$51,117.15	23,977.32
Total income tax	\$27,026.35
Victory tax net income	\$53,168.62
Less: Specific exemption	624.00
Income subject to victory tax.....	\$52,544.62
Victory tax before credit	\$ 2,627.23
Less: Victory tax credit	500.00
Net victory tax	\$ 2,127.23
Net income tax and victory tax.....	\$29,153.58
Income tax for 1942	\$10,114.31
Larger of above two amounts.....	\$29,153.58
Forgiveness feature:	
(a) Smaller of above two amounts	\$10,114.31
(b) Amount forgiven— ¾ of above amount.....	7,585.75
(c) Amount forgiven	\$ 2,528.58
Total income and victory tax liability.....	\$31,682.16
Income and victory tax liability disclosed by return—	
Original, Account No. 908020	27,435.43
Deficiency in income and victory tax.....	\$ 4,246.73

Received and Filed T.C.U.S. February 7, 1949.

Served February 8, 1949.

[Title of Tax Court and Cause.]

REQUEST FOR PLACE OF HEARING

Petitioner hereby requests that the above-entitled proceeding be placed upon the circuit calendar for hearing on the merits at San Francisco, California.

Petitioner's counsel are located in San Francisco, and a hearing in that city will result in the least inconvenience and expense to petitioner.

Dated: San Francisco, California, February 1, 1949.

/s/ SIGVALD NIELSON,

/s/ HARRY R. HORROW,

/s/ ALBERT J. SHULTS,

Attorneys for Petitioner.

[Stamped]: Granted Mar. 3, 1949.

/s/ BOLON B. TURNER,

Judge.

Received and filed T. C. U. S. February 7, 1949.

Served Mar. 4, 1949.

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

1. Admits that the petitioner herein is Alice McCourt Lamm, an individual, residing at Modoc Point, Oregon. Admits that petitioner filed her Federal income and victory tax return with the Collector of Internal Revenue for the District of Oregon. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining material allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. Denies that he erred in his determination of the deficiency as shown by the notice of deficiency, from which petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph 4(a), (b) and (c) of the petition.

5. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph 5(1) to (9), inclusive, of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's ap-

peal be denied and that the Commissioner's determination of deficiency be approved.

/s/ CHARLES OLIPHANT, JHP

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

WILFORD H. PAYNE,

Division Counsel,

JOHN H. PIGG,

R. G. HARLESS,

Special Attorneys,

Bureau of Internal Revenue.

Received and filed T. C. U. S. March 15, 1949.

[Title of Tax Court and Cause.]

JOINT MOTION FOR CONSOLIDATION OF PROCEEDINGS

Come now the parties to the above-entitled proceedings, by their respective counsel, and move for an order of the court to consolidate the fifteen proceedings in the cases set forth below, for hearing, briefing and decision:

Petitioner	Docket No.
Alice McCourt Lamm.....	21724
Estate of W. E. Lamm, Deceased, Alice McCourt Lamm, Executrix.....	21725
Winifred Carol Lamm.....	21726
Estate of Edith E. Lamm, Deceased, Edith Lamm, Executrix	22126
Edith Lamm	22127
Ethel Fisher	22128

Petitioner	Docket No.
Estate of Chas. C. Elliott, Deceased, Elsa Ehlers, Administratrix	22129
Estate of Eugene D. Elliott, Deceased, Beth L. Elliott, Executrix, and Beth L. Elliott, Surviving Wife	22130
Bess Kent	22131
Joseph S. Kent.....	22132
Rolland G. Watt and Adele C. Watt.....	22133
Elsa Ehlers, formerly Elsa Natalie.....	22635
William E. Elliott.....	22636
H. Edwin Nowell.....	22637
Elizabeth V. Nowell.....	22638

In support of this motion the parties state:

1. All cases involve identical issues of fact and of law arising out of the same transaction, and consolidation of the proceedings will save the time of the parties and of the court.

Wherefore, the parties jointly pray that the court will grant this motion.

/s/ SIGVALD NIELSON,
 /s/ HARRY R. HORROW,
 /s/ ALBERT J. SHULTS,
 Counsel for Petitioners.
 /s/ CHARLES OLIPHANT,
 Counsel, Bureau
 Of Internal Revenue.
 /s/ MARION J. HARRON,
 Judge.

[Stamped]: Granted November 15, 1949.

Filed T.C.U.S., November 15, 1949.

Served November 15, 1949.

[Title of Tax Court and Cause.]

Docket Nos. 21724, 21725, 21726, 22126, 22127,
22128, 22129, 22130, 22131, 22132, 22133,
22635, 22636, 22637 and 22638

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the following facts shall be taken to be true and received as evidence for all purposes of this proceeding, subject to the right of either party to introduce any further evidence not inconsistent with or contrary to the facts herein stipulated.

1. Petitioners are individuals except in the cases of the estate of W. E. Lamm, deceased, the estate of Edith E. Lamm, deceased, and the estate of Eugene D. Elliott, deceased, in each of which the petitioner is the duly qualified, appointed and acting executrix under the will of the deceased, and in the case of the estate of Charles C. Elliott, deceased, in which the petitioner is the duly qualified, appointed and acting administratrix of said estate.

The petitioners and their addresses are as follows:
Alice McCourt Lamm, Modoc Point, Oregon;
Estate of W. E. Lamm, Deceased, Alice McCourt
Lamm, Executrix, Modoc Point, Oregon;
Winifred Carol Lamm, Modoc Point, Oregon;
Estate of Edith E. Lamm, Deceased, Edith Lamm,
Executrix, 1415 Ocean Avenue, Santa Monica,
California;

Edith Lamm, 1415 Ocean Avenue, Santa Monica, California;

Ethel Fisher, 169 Lacumbre Road, Santa Barbara, California;

Estate of Chas. C. Elliott, Deceased, Elsa Ehlers, Administratrix, 2490 Lambert Drive, Pasadena, California;

Estate of Eugene D. Elliott, Deceased, Beth L. Elliott, Executrix, and Beth L. Elliott, Surviving Wife, 3548 Fourth Avenue, San Diego, California;

Bess Kent, 333 Montgomery Street, San Francisco 4, California;

Joseph S. Kent, 333 Montgomery Street, San Francisco 4, California;

Rolland G. Watt and Adele C. Watt, 1621 Riverside Drive, Redding, California;

Elsa Ehlers, formerly Elsa Natalie, 2490 Lambert Drive, Pasadena, California;

William E. Elliott, 100 North Normandie, Los Angeles 4, California;

H. Edwin Nowell, 601 Crocker Building, San Francisco 4, California;

Elizabeth V. Nowell, 601 Crocker Building, San Francisco 4, California.

The federal income and victory tax returns of petitioners (petitioners' decedents in the cases of the four estates) for the calendar year ended December 31, 1943, were filed with the Collector of Internal Revenue for the appropriate districts as follows:

Alice McCourt Lamm, District of Oregon;

Estate of W. E. Lamm, Deceased, Alice McCourt

Lamm, Executrix, District of Oregon;
 Winifred Carol Lamm, District of Oregon;
 Estate of Edith E. Lamm, Deceased, Edith Lamm,
 Executrix, Sixth District of California;
 Edith Lamm, Sixth District of California;
 Ethel Fisher, Sixth District of California;
 Estate of Chas. C. Elliott, Deceased, Elsa Ehlers,
 Administratrix, Sixth District of California;
 Estate of Eugene D. Elliott, Deceased, Beth L.
 Elliott, Executrix, and Beth L. Elliott, Surviv-
 ing Wife, Sixth District of California;
 Bess Kent, First District of California;
 Joseph S. Kent, First District of California;
 Rolland G. Watt and Adele C. Watt, First District
 of California;
 Elsa Ehlers, formerly Elsa Natalie, Sixth District
 of California;
 William E. Elliott, Sixth District of California;
 H. Edwin Nowell, First District of California;
 Elizabeth V. Nowell, First District of California.

2. The notices of deficiency involved in these proceedings were mailed to petitioners on the following dates:

Petitioner	Docket No.	Date
Alice McCourt Lamm	21724	Nov. 26, 1948
Alice McCourt Lamm, Executrix Estate of W. E. Lamm, Deceased.....	21725	Nov. 26, 1948
Winifred Carol Lamm	21726	Nov. 26, 1948
Edith Lamm, Executrix Estate of Edith E. Lamm, Deceased.....	22126	Jan. 26, 1949
Edith Lamm	22127	Jan. 26, 1949
Ethel Fisher	22128	Jan. 26, 1949
Elsa Ehlers, Administratrix Estate of Chas. C. Elliott, Deceased.....	22129	Jan. 26, 1949
Estate of Eugene G. Elliott, Deceased.....	22130	Jan. 26, 1949
Beth L. Elliott, Executrix, and Beth L. Elliott, Surviving Wife		

Petitioner	Docket No.	Date
Bess Kent	22131	Feb. 3, 1949
Joseph S. Kent	22132	Feb. 3, 1949
Rolland G. Watt and Adele C. Watt.....	22133	Feb. 3, 1949
Elsa Ehlers, formerly Elsa Natalie.....	22635	Jan. 26, 1949
William E. Elliott	22636	Jan. 26, 1949
H. Edwin Nowell	22637	Feb. 3, 1949
Elizabeth V. Nowell	22638	Feb. 3, 1949

3. The deficiencies determined by the Commissioner are in federal income and victory taxes for the calendar year 1943 in the following amounts:

Petitioner	Docket No.	Amount
Alice McCourt Lamm	21724	\$4,246.73
Estate of W. E. Lamm, Deceased.....	21725	9,345.83
Winifred Carol Lamm	21726	2,472.21
Alice McCourt Lamm, Executrix		
Estate of Edith E. Lamm, Deceased.....	22126	7,393.25
Edith Lamm, Executrix		
Edith Lamm	22127	7,487.04
Ethel Fisher	22128	7,012.02
Elsa Ehlers, Administratrix		
Estate of Chas. C. Elliott, Deceased.....	22129	1,559.01
Beth L. Elliott, Executrix, and		
Beth L. Elliott, Surviving Wife		
Estate of Eugene D. Elliott, Deceased.....	22130	1,164.99
Bess Kent	22131	508.84
Joseph S. Kent	22132	437.34
Rolland G. Watt and Adele C. Watt.....	22133	8,478.60
Elsa Ehlers, formerly Elsa Natalie.....	22635	5,863.86
Edith Lamm, Guardian		
Estate of William E. Elliott, Incompetent.....	22636	7,292.33
H. Edwin Nowell	22637	261.80
Elizabeth V. Nowell	22638	261.77

4. Within the time limit specified in the respective notices of deficiency mailed by the Commissioner to each petitioner, each petitioner filed in the above-entitled court a petition for redetermination of the deficiency assessed by respondent. Subsequent to the filing of each petition, petitioners in the

following numbered cases mailed to the Collector of Internal Revenue for his or her appropriate district a check in full payment of the deficiency determined by the Commissioner against him or her plus interest in the following amounts:

Docket No.	Deficiency	Interest	Total	Date
21724	\$4,246.73	\$1,281.00	\$5,527.73	4/ 8/1949
21725	9,345.83	2,822.18	12,168.01	4/..../1949
22126	7,393.25	2,269.52	9,662.77	5/28/1949
22126	7,393.25	2,269.52	9,662.77	5/28/1949
22127	7,487.07	2,298.32	9,785.39	5/28/1949
22128	7,012.02	2,172.09	9,184.11	5/31/1949
22129	1,559.01	491.90	2,090.91	5/28/1949
22130	1,164.99	357.81	1,522.80	5/28/1949
22131	508.54	156.11	664.65	6/ 1/1949
22132	437.34	134.25	571.59	6/ 1/1949
22133	8,478.60	2,605.48	11,084.08	6/ 3/1949
22635	5,863.86	1,837.07	7,700.93	6/24/1949

In each case the sum was paid subject to the decision of the above-entitled court in these proceedings and under the statement that such payment is not an acknowledgment that petitioners are liable for any part of the payment or any part of the deficiency asserted.

5. On May 6, 1930, and on September 5, 1930, respectively, Lamm Lumber Company, a corporation, issued two promissory notes in the respective principal sums of \$150,000 and \$250,000, payable to the order of Consolidated Securities Company, hereinafter referred to as "Consolidated," in consideration of loans from the latter in those two sums. Each of said notes was secured by a mortgage on a certain railroad owned by Lamm Lumber Company, and as part of the same transactions, Lamm Lumber Company gave options to Consoli-

dated to purchase said railroad in preference to any other purchaser on the same terms. On May 26th and September 30, 1930, Consolidated executed respective declarations of trust that it held said notes, mortgages and options for the benefit of Southern Pacific Land Company, and at all times prior to July 1, 1941, said Southern Pacific Land Company was the beneficial owner of said notes, mortgages and options.

From March 5, 1932, to September 5, 1934, various additional notes were issued by Lamm Lumber Company to Consolidated representing unpaid interest on said corporate indebtedness. On December 24, 1936, Lamm Lumber Company and Consolidated entered into a supplementary agreement reciting the indebtedness and mortgages, compromising the unpaid interest as to its amount, funding the said interest and accruals to January 1, 1938, by adding them to the principal, restating the new principal at January 1, 1938, as \$497,845, and stating interest from January 1, 1938, to be 3 per cent. Lamm Lumber Company, the obligor, covenanted to pay monthly \$5 for each car of logs shipped over the railroad with minimum payments of \$15,000 a year until December 31, 1941, and \$35,000 a year thereafter, said payments to be first applied on interest and then on principal. A copy of each of said notes hereinabove mentioned and of said agreement is attached hereto, collectively marked "Exhibit 1-A," and deemed incorporated herein.

On February 8, 1940, Consolidated endorsed to

The Anglo California National Bank of San Francisco all of said promissory notes, without recourse, and assigned to said bank its rights as mortgagee.

At various times from February 10, 1938, to June 11, 1941, Lamm Lumber Company made payments on the debt in accordance with said agreement of December 24, 1936, so that as of June 12, 1941, the sum owing by Lamm Lumber Company to Southern Pacific Land Company was \$411,264.99. All of said notes were then on their face past due.

6. For some time prior to July 1, 1941, Southern Pacific Land Company had been desirous of liquidating its lumber interests in Northern California and Oregon and let it be known that it would be willing to sell its interest in the Lamm Lumber Company notes at a substantial discount. In order to avail themselves of the investment opportunity thus presented, certain individuals, including petitioners herein (petitioners' decedents in the cases of the four estates) each on his or her own behalf, offered to purchase at the proffered discount undivided fractional interests in said notes, making in total 100 per cent of the ownership of said notes. These offers were presented to Southern Pacific Company (parent company of Southern Pacific Land Company) on behalf of Southern Pacific Land Company as an offer to purchase the total ownership of said notes for a sum amounting to 50 per cent of the balance of the principal of the loan plus the interest currently due at the time of the completion of the purchase. Such offer was subsequently accepted by Southern Pacific Company on

behalf of Southern Pacific Land Company, and on July 1, 1941, said individuals paid over to said Southern Pacific Land Company the various amounts agreed to be paid by them for the purchase of said undivided fractional interests and totaling the sum of \$206,388.55, and the beneficial ownership of said notes and mortgages was transferred from Southern Pacific Land Company to said individuals in proportion to their undivided fractional interests.

7. Said individuals, as beneficial owners of said undivided fractional interests in said notes by virtue of the purchase related in paragraph 6 above, entered into a written agreement called "Instructions and Agreement," dated July 15, 1941, with American Trust Company, hereinafter referred to as "Trust Company," a copy of which form of agreement is hereto attached, marked "Exhibit 2-B," and deemed incorporated herein. In executing said agreement each of said individuals signed an individual counterpart thereof, stating therein his or her percentage interest in said notes. Contemporaneously with the delivery of said Instructions and Agreement to Trust Company, said individuals delivered to Trust Company a list of the names, addresses, amounts invested, and percentage interests of said individuals. A copy of said list is hereto attached, marked "Exhibit 3-C," and deemed incorporated herein.

Pursuant to said Instructions and Agreement, said notes were endorsed, and said mortgages assigned, to Trust Company to hold and keep in its

possession in accordance with the instructions contained in said Instructions and Agreement.

8. In accordance with said Instructions and Agreement (Exhibit 2-B), Trust Company duly remitted collections of interest and principal paid to it by Lamm Lumber Company to those owners shown to be entitled thereto in accordance with the ownership interests set forth in said Exhibit 3-C. During this period, none of said individuals sold or exchanged his undivided fractional interest in said notes. In several instances, however, certain owners changed their addresses, informing Trust Company of said change, and Trust Company thereupon mailed its remittances to the new addresses.

9. Trust Company's charges for its services in collecting and remitting interest and principal payments and in maintaining a record of ownership were shared by the participating owners of record and by Lamm Lumber Company in the following manner: As agreed in said Instructions and Agreement (Exhibit 2-B), Trust Company charged the sum of \$500 as an acceptance fee, an annual fee of \$100 plus $\frac{1}{10}$ of 1 per cent of the unpaid balance of the obligation at the beginning of each year, and \$250 as a closing fee, plus reimbursement for out-of-pocket expenses. Of these charges Lamm Lumber Company agreed by letter dated August 26, 1941, to Trust Company, a copy of which is hereto attached, marked "Exhibit 4-D," and deemed incorporated herein, to pay sums at the rate of \$250 per annum which were credited against the foregoing total charges.

10. On December 7, 1943, said notes were retired by payment of the balance of the principal and interest due thereon. During the year 1943 petitioners realized gains on the retirement of said notes in amounts proportionate to their fractional ownership thereof.

11. Said gains realized by petitioners were reported in their income and victory tax returns for the calendar year 1943 as long-term capital gains, of which 50 per cent were reported as income. In arriving at the deficiencies asserted in these proceedings, respondent determined that these obligations were not at the date of retirement in registered form within the meaning of section 117(f) of the Internal Revenue Code and that said gains were not taxable as long-term capital gains but were taxable as ordinary income.

Dated: November 1, 1949.

/s/ SIGVALD NIELSON,

/s/ HARRY R. HORROW,

/s/ ALBERT J. SHULTS,

Counsel for Petitioners.

/s/ CHARLES OLIPHANT,

Counsel, Bureau

Of Internal Revenue.

EXHIBIT 1-A

\$150,000.00

Modoc Point, Oregon, May 6th, 1930.

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay to Consolidated Securities Company, a California corporation, or order, at the office of The Anglo & London Paris National Bank of San Francisco, in the City and County of San Francisco, State of California, One Hundred and Fifty Thousand (150,000) Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of five and one-half ($5\frac{1}{2}$) per centum per annum from date until paid. The interest herein provided for shall be paid semi-annually from date hereof, and said principal of this note shall be payable in installments of not less than Fifty Thousand (50,000) Dollars. The first of said installments is due and payable May 1, 1934, and a like installment at the end of each and every one year period thereafter until the whole of said principal sum of One Hundred and Fifty Thousand (150,000) Dollars shall have been fully paid. If any of said payments of either principal or interest is not paid when due, the whole of said principal sum and interest shall become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, or any interest thereon, the said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said

suit or action. The entire unpaid principal, or any portion thereof, may, at the option of Lamm Lumber Company, be paid at any time before maturity.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

[Seal] J. S. KENT,
Secretary.

May 26, 1930

Interest in the amount of \$452.00 on this note is waived due to delayed payment of principal by Consolidated Securities Company; May 6, 1930, to May 26, 1930, twenty days, at $5\frac{1}{2}\%$.

THE ANGLO & LONDON PARIS NATIONAL
BANK OF SAN FRANCISCO,
R. R. ZELICK.

Interest Payments.

11/6/30—\$36.73.

5/6/31— 41.25.

11/6/31— 41.25.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY.
By H. L. MACHEN,
Vice President.

[Seal] By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of The American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,
Vice President,

By R. A. HOLMBERG,
Ass't Sect'y.

\$250,000.00.

Modoc Point, Oregon, September 5, 1930.

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay to Consolidated Securities Company, a California corporation, or order, at the office of The Anglo & London Paris National Bank of San Francisco, in the City and County of San Francisco, State of California, Two Hundred and Fifty Thousand (250,000) Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of five and one-half ($5\frac{1}{2}$) per centum per annum from date until paid. The interest herein provided for shall be paid semi-annually from date hereof, and said principal of this note shall be payable in installments of not less than Fifty Thousand (50,000) Dollars. The first of said installments is due and payable May 1, 1937, and a like installment at the end of each and every one year period thereafter until the whole of said principal sum of Two Hundred and Fifty Thousand (250,000) Dollars shall have been fully paid. If

any of said payments of either principal or interest is not paid when due, the whole of said principal sum and interest shall become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, or any interest thereon, the said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action. The entire unpaid principal, or any portion thereof, may, at the option of Lamm Lumber Company, be paid at any time before maturity.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

[Seal] J. S. KENT,
Secretary.

Interest Payments

3/7/31—\$6875.

9/5/31— 6875.

February 23, 1940

Without recourse, pay to the order of The Anglo
California National Bank of San Francisco

CONSOLIDATED SECURITIES
COMPANY,
By H. L. MACHEN,
Vice President.

By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO.

By FRED V. VOLLMER,
Vice President.

By R. A. HOLMBERG,
Assistant Secretary.

March 5th, 1932

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand Eight Hundred and Seventy-five (6,875.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo
California National Bank of San Francisco

CONSOLIDATED SECURITIES
COMPANY,

By H. L. MACHEN,
Vice President.

By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the Order of American
Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO.

By FRED V. VOLLMER,
Vice President.

By R. A. HOLMBERG,
Assistant Secretary.

May 6th, 1932

\$4,125.00

For value received, Lamm Lumber Company, an
Oregon corporation, promises to pay, on demand,
to Consolidated Securities Company, a California
corporation, or order, at The Anglo California Na-
tional Bank of San Francisco, San Francisco, Cali-
fornia, Four Thousand One Hundred and Twenty-
five (4,125.00) Dollars, in lawful money of the
United States of America, with interest in like
money at the rate of 5½ per cent per annum from
date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo
California National Bank of San Francisco

CONSOLIDATED SECURITIES
COMPANY,
By H. L. MACHEN,
Vice President.
By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of American
Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO.

By FRED V. VOLLMER,
Vice President.
By R. A. HOLMBERG,
Assistant Secretary.

September 5th, 1932

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand, Eight Hundred and Seventy-five (6,875.00) Dollars in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED SECURITIES
COMPANY,

By H. L. MACHEN,
Vice President.

By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO.

By FRED V. VOLLMER,
Vice President.

By R. A. HOLMBERG,
Assistant Secretary.

November 6th, 1932

\$4,125.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Four Thousand One Hundred and Twenty-five (4,125.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED SECURITIES
COMPANY,

By H. L. MACHEN,
Vice President.

By I. M. OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of The American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO.

By FRED V. VOLLMER,
Vice President.

By R. A. HOLMBERG,
Assistant Secretary.

March 5th, 1933

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand, Eight Hundred and Seventy-five (6,875.00) Dollars in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,

By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940.

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,

By H. L. MACHEN,
Vice President,

By I. M OTTO,
Assistant Secretary.

July 9, 1941

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,
Vice President,

By R. A. HOLMBERG,
Ass't Sect'y.

May 6th, 1933.

\$4,125.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Four Thousand One Hundred and Twenty Five (4,125.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,
By H. L. MACHEN,
Vice President,
By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,

Vice President,

By R. A. HOLMBERG,

Ass't Sect'y.

September 5th, 1933.

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand Eight Hundred and Seventy Five (6,875.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,

By W. E. LAMM,

President.

Attest:

JOSEPH S. KENT,

Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo
California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,

By H. L. MACHEN,
Vice President,

By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of American
Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,
Vice President,

By R. A. HOLMBERG,
Ass't Sect'y.

November 6th, 1933

\$4,125.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Four Thousand One Hundred and Twenty-five and No One-hundredths (4,125.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Its Secretary.

February 23, 1940

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,
By H. L. MACHEN,
Vice President,
By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,

Vice President,

By R. A. HOLMBERG,

Ass't Sect'y.

March 5th, 1934.

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand Eight Hundred and Seventy-five (6,875.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorney's fees in said suit or action.

LAMM LUMBER COMPANY,

By W. E. LAMM,

President.

Attest:

JOSEPH S. KENT,

Its Secretary.

February 23, 1940.

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,

By H. L. MACHEN,
Vice President,

By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,
Vice President,

By R. A. HOLMBERG,
Ass't Sect'y.

May 6, 1934.

\$4,125.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Four Thousand One Hundred and Twenty-five and No One-Hundredths (4,125.00) Dollars, in lawful money of the United States of America,

with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

[Seal] JOSEPH S. KENT,
Its Secretary.

February 23, 1940.

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,
By H. L. MACHEN,
Vice President.

By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,
Vice President.

[Seal] By R. A. HOLMBERG,
Ass't Sect'y.

September 5th, 1934.

\$6,875.00

For value received, Lamm Lumber Company, an Oregon corporation, promises to pay, on demand, to Consolidated Securities Company, a California corporation, or order, at The Anglo California National Bank of San Francisco, San Francisco, California, Six Thousand Eight Hundred and Seventy-five (6,875.00) Dollars, in lawful money of the United States of America, with interest in like money at the rate of $5\frac{1}{2}$ per cent per annum from date until paid.

In case suit or action is instituted to collect this note, or any portion thereof, or interest thereon, said Lamm Lumber Company promises to pay such additional sum as the court may adjudge reasonable attorneys' fees in said suit or action.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

JOSEPH S. KENT,
Secretary.

February 23, 1940.

Without recourse, pay to the order of The Anglo California National Bank of San Francisco.

CONSOLIDATED
SECURITIES COMPANY,
By H. L. MACHEN,
Vice President.
By I. M. OTTO,
Assistant Secretary.

July 9, 1941.

Without recourse, pay to the order of American Trust Company.

THE ANGLO CALIFORNIA NATIONAL BANK
OF SAN FRANCISCO,

By FRED V. VOLLMER,
Vice President.

By R. A. HOLMBERG,
Ass't Sect'y.

This Agreement, made this 24th day of December, 1936, by and between Lamm Lumber Company, a corporation organized and existing under the laws of the State of Oregon, first party, hereinafter called "Mortgagor," and Consolidated Securities Company, a corporation organized and existing under the laws of the State of California, second party, hereinafter called "Mortgagee,"

Recitals:

Mortgagor is indebted to Mortgagee, as evidenced by various promissory notes executed by Mortgagor to Mortgagee, and secured by two (2) mortgages upon that certain railroad extending from Chinchalo, Oregon, in an easterly direction 32.37 miles to the South line of Section 7, Township 32 South, Range 12 East, at a point 467' East and the section corner common to Sections 12, 13, 17 and 18, and situated partly in the County of Klamath and partly

in the County of Lake, State of Oregon, and known as the "Yamsey Mountain Railroad." One of said mortgages is dated May 6th, 1930, and was recorded on June 16th, 1930, in Volume 46 of Mortgages, Page 553 in the records of said County of Klamath; also recorded on May 31st, 1930, at Page 615, Book 17, Records of Chattel Mortgages of said County of Lake. The other morgage is dated September 5th, 1930, and was recorded on September 12th, 1930, in Volume 47 of Mortgages, at Page 267, Records of said County of Klamath, and also recorded on September 22nd, 1930, at Page 85 in Book 23, Record of Mortgages of said County of Lake.

The principal sum of said indebtedness is evidenced by two (2) promissory notes, one dated May 6th, 1930, for the sum of \$150,000, and the other dated September 5th, 1930, for the sum of \$250,000, and the unpaid interest which has accrued and will accrue on the principal sum of \$400,000, as of December 31st, 1936, amounts to the sum of \$127,939.20.

Agreement:

Now, Therefore, in consideration of the mutual and dependent promises herein contained, and notwithstanding anything to the contrary contained in said notes and said mortgages, it is mutually agreed by and between the parties hereto as follows, to wit:

1. Simple interest at the rate of five and one-half ($5\frac{1}{2}$) per cent per annum shall be accrued from the sixth day of November, 1931, on the

\$150,000 note and from the fifth day of September, 1931, on the \$250,000 note to and including the thirtieth day of June, 1933, on both notes, and the interest so accrued shall be added to the principal. Effective July 1st, 1933, the rate of interest on the principal of said notes as so increased shall be and is hereby reduced from $5\frac{1}{2}\%$ per annum to three (3) per cent per annum, and simple interest shall accrue after June 30th, 1933, at the rate of three (3) per cent per annum until January 1st, 1938. The interest thus accrued shall be added to the principal, producing a new principal sum, as of January 1st, 1938, of the sum of \$497,845.00. The foregoing adjustment of interest results in a decrease of interest accruals in the sum of \$43,253.24, which shall be and is hereby cancelled and the Mortgagor is hereby released from all obligations to pay the same. Commencing January 1st, 1938, the new principal sum of said indebtedness shall bear interest at the rate of three (3) per cent per annum until fully paid.

2. Mortgagor covenants and agrees to pay to Mortgagee commencing January 1st, 1938, the sum of Five (5) Dollars, lawful money of the United States, for each and every carload of logs transported over the Yamsey Mountain Railroad, and the sum of Ten (10) Dollars, lawful money of the United States, for each carload of manufactured forest products transported over said Yamsey Mountain Railroad. Such payments shall be made monthly on the tenth day of each calendar month for all logs and manufactured products transported during the preceding calendar month. The sums

of money so paid shall be applied (first) to the payment of interest at the rate of three (3) per cent per annum on the adjusted principal of \$497,845.00, or the unpaid balance thereof as reduced by subsequent payments, and (second) the remainder of such payments shall be applied to reduction of said adjusted principal. Mortgagor agrees to furnish or cause to be furnished to Mortgagee, or its nominee, on or before the tenth day of each month, a true statement of the number of carloads of logs and manufactured forest products transported over said Yamsey Mountain Railroad, during the preceding calendar month, and further covenants and agrees that duly authorized representatives of Mortgagee shall have the right, at all reasonable times, to inspect and examine the books, records and accounts of Mortgagor, with respect to transportation of logs and manufactured forest products over said Yamsey Mountain Railroad for the purpose of verifying each and every such statement. Mortgagor guarantees a minimum payment of \$15,000 for each calendar year during the period commencing January 1st, 1938, to December 31st, 1941, and a minimum payment of \$35,000 for each calendar year commencing January 1st, 1942. In the event that the sum of the monthly payments at the rates herein provided for, shall not equal the minimum payment required to be made at the end of each calendar year, the Mortgagor agrees to pay to the Mortgagee within thirty (30) days, after the expiration of each such calendar yearly period, an additional sum which to-

gether with the monthly payments theretofore paid for such yearly period to Mortgagee for logs and manufactured forest products transported over said Yamsey Mountain Railroad, shall equal the minimum payment guaranteed by the Mortgagor for such calendar year. Payments herein provided for shall continue until the entire principal indebtedness, together with the interest accruing thereon, shall be paid in full.

3. Until the principal amount, together with the interest accruing thereon, has been fully paid Mortgagor covenants and agrees that it will not sell said Yamsey Mountain Railroad, or any interest therein, or lease said railroad and that it will not permit common carrier operations over said railroad without the consent of the Mortgagee.

4. All extensions and/or branches of said railroad and appurtenances, whether located upon the lands described in said mortgages or elsewhere, shall fall under and be subject to said mortgages, and all of the terms, covenants and conditions thereof and this agreement. Nothing herein shall be construed as a limitation of the after acquired properties clauses contained in said mortgages, nor of the description of the properties covered by said mortgages.

5. Except as herein otherwise provided, all of the terms, covenants, conditions and stipulations contained in the notes evidencing said indebtedness and in the said mortgages securing said indebtedness, shall be and remain in full force and effect unmodified and unchanged by this agreement.

In Witness Whereof, the parties hereto have executed this agreement, in duplicate, the day and year first hereinabove written.

LAMM LUMBER COMPANY,
By W. E. LAMM,
President.

Attest:

J. S. KENT,
Secretary.

CONSOLIDATED SECURI-
TIES COMPANY,

By H. L. MACHEN,
Vice President.

Attest:

I. M. OTTO,
Asst. Secretary.

On this 24th day of December, 1936, appeared before me, a Notary Public for and in the State of Oregon, County of Klamath, W. E. Lamm, personally known to me to be the President of the Lamm Lumber Company, and acknowledged that he executed the within instrument.

[Seal] By E. L. PUTNAM,
Notary Public.

My commission expires June 20, 1939.

State of California,
City and County of San Francisco—ss.

On this 29th day of December, in the year One

Thousand Nine Hundred and Thirty-six before me, Mary J. Creech, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared H. L. Machen and I. M. Otto known to me to be the Vice President and Assistant Secretary of the corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] MARY J. CREECH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 25, 1937.

State of California,
City and County of San Francisco—ss.

On the 28th day of December, in the year One Thousand Nine Hundred and Thirty-six, before me, Eleanor J. Smith, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared J. S. Kent, known to me to be the Secretary of Lamm Lumber Company, the Corporation described in and that executed the

within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, in the City and County of San Francisco, State of California, the day and year in this Certificate first above written.

[Seal] ELEANOR J. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires December 29, 1938.

EXHIBIT 2-B

Instructions and Agreement

American Trust Company
464 California Street
San Francisco, California

Gentlemen:

Lamm Lumber Company, an Oregon corporation, has an obligation, the unpaid balance of which was Four Hundred Eleven Thousand Two Hundred Sixty-four and 99/100 Dollars (\$411,264.99) on June 12, 1941, bearing interest at the rate of 3% per annum from that date, and which is evidenced by the following:

1. Notes of Lamm Lumber Company payable to Consolidated Securities Company, endorsed without recourse by Consolidated Securities Com-

pany to the Anglo-California National Bank of San Francisco, and endorsed without recourse by the Anglo-California National Bank of San Francisco to American Trust Company:

Date of Note	Face Amount	Int. Rate	Maturity
5/6/1932	\$ 4,125.00	5½%	Demand
11/6/1932	4,125.00	5½%	Demand
5/6/1933	4,125.00	5½%	Demand
11/6/1933	4,125.00	5½%	Demand
5/6/1934	4,125.00	5½%	Demand
3/5/1932	6,875.00	5½%	Demand
9/5/1932	6,875.00	5½%	Demand
3/5/1933	6,875.00	5½%	Demand
9/5/1933	6,875.00	5½%	Demand
3/5/1934	6,875.00	5½%	Demand
9/5/1934	6,875.00	5½%	Demand
* 5/6/1930	150,000.00	5½%	\$50,000 on 5/1/34 \$50,000 on 5/1/35 \$50,000 on 5/1/36
** 9/5/1930	250,000.00	5½%	\$50,000 on each May 1st commencing May 1st, 1937

Under terms of agreement (hereinafter referred to as 4), the interest rate on notes * and ** above is reduced to 3%, effective July 1st, 1938, after certain adjustments with respect to interest accrued prior thereto; also modifies principal payments with respect to said notes.

2. Mortgage Indenture for One Hundred Fifty Thousand Dollars (\$150,000.00) dated May 6, 1930, between Lamm Lumber Company, an Oregon corporation as "Mortgagor" and Consolidated Securities Company, a California corporation as "Mortgagee," recorded May 31, 1930, on Page 615 in Book 17, Records of Chattel Mortgages in Lake County, Oregon, and recorded June 16, 1930, in Volume 46 of Mortgages, Page 553 in Klamath County, Oregon.

3. Mortgage Indenture for Two Hundred Fifty Thousand Dollars (\$250,000.00), dated September 5, 1930, between Lamm Lumber Company, an Oregon corporation, as "Mortgagor" and Consolidated Securities Company, a California corporation, as "Mortgagee" recorded September 12, 1930, in Volume 47 of Mortgages, Page 267 in Klamath County, Oregon, and recorded September 22, 1930, on Page 85 in Book 23, Records of Mortgages in Lake County, Oregon.

4. Agreement dated December 24, 1936, between Lamm Lumber Company, an Oregon corporation as "Mortgagor" and Consolidated Securities Company, a California corporation as "Mortgagee," recorded January 4, 1937, in Volume 58 of Mortgages, Page 70, Klamath County, Oregon, and recorded January 8, 1937, on Page 186 in Book 26, Records of Realty Mortgages, Lake County, Oregon.

The undersigned, joint owners of said obligation in the fractional interests indicated below have caused the above described notes to be endorsed and delivered to you, and have caused The Anglo-California National Bank of San Francisco to execute and deliver to you an "Assignment of Mortgages" dated July 9, 1941, to be held by you as our Agent and subject to the provisions of this Agreement. The undersigned have caused an unrecorded agreement covering "Option Rights" dated May 6, 1930, between Lamm Lumber Company and Consolidated Securities Company to be assigned to you likewise

to be held by you as our Agent and subject to the provisions of this Agreement.

You shall cause to be recorded in Lake and Klamath Counties, Oregon, the "Assignment of Mortgages" dated July 9, 1941, hereinbefore referred to.

You shall hold without causing recordation thereof "Agreements Covering Option Rights" dated May 6, 1930, and the assignment thereof hereinbefore referred to.

You are to receive for the account of the undersigned and as their Agent such payments on account of interest and principal as may be made to you from time to time by Lamm Lumber Company. Out of the first payments received by you on account of principal, you are to pay H. Edwin Nowell or his order the sum of \$676.05. On or within a reasonable time after the 10th day of each September, December, March and June, you are to remit to each of the undersigned a check for his share of the interest payments and separate check for his share of the principal payments, less your charges.

You shall have no duty to take any steps to enforce the collection of said obligation, nor to prevent it or any part of it or any of the notes, mortgages, agreements, or other documents evidencing or modifying it, from outlawing, nor to take any action of any other kind other than as herein specifically set forth, except upon the written instructions of the persons who, at the time, shall be the owners in the aggregate of 75% or

more of the entire interest in said obligation, and after the furnishing to you of such indemnity as you shall require, any and all action taken by you pursuant to such instructions shall be your complete acquittance relative thereto.

You shall not be responsible or liable in any manner whatever for the sufficiency, genuineness, or validity of said obligation, or the Mortgages securing the same, or the agreements or assignments, or other documents or instruments, affecting them or it, or with the respect to their form or execution. You shall be fully protected in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by you to be genuine and to be signed by the proper party or parties. You may advise with legal counsel in the event of any dispute or question as to the construction of these instructions, or your duties thereunder, and you shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel.

In the event of any disagreement between the undersigned or their successors in interest, or any other person or persons, resulting in adverse claims being made in connection with or for any papers, money, or property involved herein, or affected hereby, you shall be entitled at your option to refuse to comply with any such claim or demand so long as such disagreement shall continue, and in so doing you shall not be or become liable to any of the undersigned or any of them for your failure or refusal to comply with such conflicting or ad-

verse demands, and you shall be entitled to continue so to refrain and refuse to act until:

1. The rights of the adverse claimants have been finally adjudicated in the Court assuming and having jurisdiction of the parties, and the money, papers and property involved herein are affected hereby; and/or

2. All differences shall have been adjusted by agreement and you shall have been notified thereof in writing, signed by all of the persons interested.

3. In the event of such disagreement, you in your discretion, may file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated, and deposit with the Court all documents and property held hereunder, and the undersigned agree to pay all costs and counsel fees incurred by you in such action, and said costs and fees may be included in the judgment in any other action.

For your ordinary services hereunder, you shall receive, and shall be entitled to deduct from principal payments, or if they are insufficient, then from interest payments, compensation as follows:

\$500 as an acceptance fee;

Reimbursement for out-of-pocket expenses incurred by you;

An annual fee of \$100.00 plus 1/10 of 1%

of the unpaid balance of said obligation at the beginning of each year;

\$250.00 as a closing fee.

Any fees paid you by Lamm Lumber Company shall be credited against the foregoing.

For any extraordinary services rendered by you hereunder, you shall be entitled to reasonable additional compensation. Your charges for any services in connection with the individual interests of any of the undersigned or their successors in interest shall be charged against them individually.

The undersigned agree jointly and severally to indemnify and hold you harmless for all taxes, expenses, costs, demands, claims and liabilities of every kind and character arising out of or in connection with these instructions and the property held hereunder.

All rights and obligations of the undersigned hereunder shall inure to and be binding on their successors in interest which term shall include their heirs, assigns and personal representatives.

You shall not be bound to take notice of any change in the ownerships of the interests of any of the undersigned unless and until there shall have been filed with you such documentary evidence as you shall consider necessary to establish such change.

These instructions may be terminated at any time by the then holders of 100% of the interest in said obligation, but not otherwise. In such event, after the payment or provisions for your compensa-

tion and other charges, the property then held hereunder shall be returned to the undersigned, or their successors in interest, or their order.

When there shall have been paid to you by or on behalf of Lamm Lumber Company in lawful money of the United States sums totaling \$411,-264.99, plus simple interest on the decreasing balances at the rate of 3% per annum, you are authorized to cancel all of the notes held by you hereunder, and to return them to Lamm Lumber Company and to execute and deliver to it any and all releases, satisfactions, and other instruments necessary or desirable to evidence the extinguishment of its said obligation.

These instructions may be signed in any number of counterparts with the same effect as though they were one and the same document. They shall not become effective for any purpose unless and until they have been signed by the owners of 100% of the interest in said obligation.

Dated as of July 15, 1941.

.....

Percentage Interest%.

Address:

.....

We acknowledge receipt of the signed original hereof and of the documents referred to herein, and agree to carry out the foregoing instructions.

Dated:, 1941.

AMERICAN TRUST
COMPANY.

EXHIBIT 3-C

American Trust Company

Agency Accounts, Mrs. Edith Lamm, et al., for collection of interest at 3% and the Principal of an obligation of Lamm Lumber Company of Modoc Point, Oregon, as from July 1, 1941, in a principal sum of \$411,264.99.

Names and Addresses	Participation by	Percentage of the Total Interest and Principal Belonging to Each
	Each of a Total Sum of \$205,632.50	
Mrs. Edith Lamm	\$25,000	12.157611
3218-3rd Ave., San Diego, Calif.		
Miss Edith Lamm	25,000	12.157611
3218-3rd Ave., San Diego, Calif.		
Ethel Fisher	25,000	12.157611
La Cumbre Road, Santa Barbara, Calif.		
W. E. Elliott	25,000	12.157611
667 Carondelet St., Los Angeles, Calif.		
Elsa Natalie	20,000	9.726089
2095 E. Orange Grove Ave., Pasadena, Calif.		
W. E. Lamm	16,500	8.024023
Modoc Point, Oregon		
R. G. Watt	15,000	7.294567
Prineville, Oregon		
Alice McCourt Lamm.....	12,000	5.835653
Trustee for Winifred Carol Lamm		
Modoc Point, Oregon		
Chas. C. Elliott	8,500	4.133588
Rural Box 905, Rt. 1, Fontana, Calif.		
Alice McCourt Lamm	8,000	3.890436
Modoc Point, Oregon		
E. D. and Beth L. Elliott, J. T... 7,000		3.404131
3218-3rd Ave., San Diego, Calif.		
Joseph S. Kent	5,000	2.431522
333 Montgomery St., San Francisco, Calif.		
H. Edwin Nowell	2,632.50	1.280197
601 Crocker Building, San Francisco, Calif.		
Everitt A. and Lorraine		
M. Hill, J.T.	2,000	.972609
Modoc Point, Oregon		

Names and Addresses	Participation by	Percentage of the
	Each of a Total Sum of \$205,632.50	Total Interest and Principal Belonging to Each
C. E. and Manila		
McClung Matkin, J.T.	2,000	.972609
Modoc Point, Oregon		
S. E. and Ann J. Rife, J.T.....	2,000	.972609
Modoc Point, Oregon		
W. A. & Edna S. Spangler, J.T.	2,000	.972609
Modoc Point, Oregon		
S. W. & Alta J. Egeline, J.T.....	2,000	.972609
2202 Oregon Avenue, Klamath Falls, Ore.		
A. G. Hammond	1,000	.486305
5915 Ross Street, Oakland, Calif.		
Total.....	<u>\$205,632.50</u>	<u>100.000000</u>

Correct Final List

EXHIBIT 4-D

Lamm Lumber Company
Manufacturers

Klamath Quality Ponderosa Pine
Modoc Point, Oregon

August 26, 1941

American Trust Co.,
464 California St.,
San Francisco, Calif.

Attention Mr. Brown, Trust Dept.

Dear Mr. Brown:

Relative to our R.R. mortgage which you hold in trust for the new owners we wish to suggest that we think details should correspond to practice heretofore established.

We have been paying the Anglo bank \$250.00 per year service charge, payable in arrears for each six months. Our company should therefore pay the

same in the future and the participants in ownership should pay the balance. We have no objection to paying six months in advance if you prefer. Please bill us for these charges.

The former holders of the mortgage figured exact interest on the basis of 365 days per year. We notice that your company is computing interest bank style on 360 days. We think you should change to the 365 day basis to conform with prior practice.

May we hear from you on these details?

Very truly yours,

LAMM LUMBER COMPANY.

By W. E. LAMM.

WEL/hs

cc H. E. Nowell.

Filed T.C.U.S. November 15, 1949.

The Tax Court of the United States

Docket Nos. 21724, 21725, 21726, 22126, 22127,
22128, 22129, 22130, 22131, 22132, 22133, 22635,
22636, 22637 and 22638

ALICE McCOURT LAMM, et al.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Tuesday, November 15, 1949

Met, pursuant to notice, at 9:30 o'clock a.m.

Before: Hon. Marion J. Harron,
Judge.

Appearances:

HARRY R. HORROW, ESQ., and
FRANCIS N. MARSHALL, ESQ.,
Appearing on Behalf of Petitioners.

T. M. MATHER, ESQ.,
(Hon. Charles Oliphant, Chief Counsel,
Bureau of Internal Revenue)
Appearing for the Respondent.

PROCEEDINGS

The Clerk: Dockets 21724, 21725, 21726, and
22126, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37 and 38,
Alice McCourt Lamm, et al.

Will you state your appearances, please?

Mr. Horrow: Harry R. Horrow, and Francis M. Marshall, for the Petitioners.

Mr. Mather: T. M. Mather, for the Respondent.

The Court: Mr. Horrow, will you proceed, please?

Mr. Horrow: There is a single issue involved in each of these proceedings. I move that they be consolidated for trial and opinion.

The Court: Motion is granted.

Mr. Horrow: I now file a joint motion for consolidation. If your Honor please, the issue involves Section 17F of the Internal Revenue Code. The question presented is whether gains realized by each of the Petitioners in these cases are to be treated as capital gains as reported by the Petitioners in their returns for the year 1943 or whether they are to be treated as ordinary income as determined by the Commissioner. That question involves the provisions of Section 17F, which provides that corporate indebtedness in registered form gives rise to a gain resulting from an exchange. The question here is whether certain indebtedness of the Lamm Lumber Company, which was retired in 1943 and gave [3*] rise to gains for each of the petitioners in that year is corporate indebtedness in registered form within the meaning of that section.

The parties have entered into a stipulation of facts which I wish to file at this time.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: The stipulation of facts is received and made part of the record.

Mr. Horrow: I would like to review briefly the stipulation, your Honor.

The Court: There are four exhibits attached to the stipulation, Exhibit 1-A to 4-B. That is all, is that correct?

Mr. Horrow: That is correct, your Honor.

The Court: And those exhibits are received in evidence.

Mr. Horrow: Yes.

(The documents referred to were marked and received in evidence as Petitioner's Exhibits Nos. 1-A to 4-B.)

Mr. Horrow: The first four paragraphs of the stipulation cover formal matters with respect to the amounts of the deficiencies in controversy.

Paragraph 5 describes the origin of the indebtedness in question here. The indebtedness consisted of promissory notes which were issued by the Lamm Lumber Company, a corporation. [4] Copies of each of the notes is attached to the stipulation and marked Exhibit 1-A. The amount of the indebtedness owing as of July 1, 1941, at which time the Petitioners acquired interest in these notes, is stipulated and Paragraph 6 describes the method whereby the Petitioners acquired their interest in the notes. The notes were owned by the Southern Pacific Land Company and it offered to sell to the Petitioners these notes at 50 per cent of the balance of the principal of the loan. The purchase was made pursuant to said offer and Paragraph 7 de-

scribes the execution of a written agreement that was entered into with the American Trust Company whereby these notes were delivered to the American Trust Company to be held in conformance with that agreement.

Contemporaneously with the delivery of this agreement there was delivered to the American Trust Company a list of the names, addresses, amounts invested, and percentage interest of each of the Petitioners herein, and the other individuals who are not parties to this proceeding who owned interest in the notes. A copy of that list is marked Exhibit 3 and attached to the stipulation.

It is our contention that by virtue of this agreement, which is in evidence as Exhibit 2-B, and the list which is in evidence as Exhibit 3-C, together with the procedure followed in connection with these notes, that the notes became registered within the meaning of Section 17F and had that [5] status at the time of retirement in 1943. The subsequent paragraphs of the stipulation cover the procedure covered in making payments to the owners of interest in the notes and the stipulations covering that procedure will be amplified by our oral testimony on the part of an officer of the American Trust Company. There is no dispute as to the amount of the gains, your Honor. The sole question is whether the gains resulted from retirement of registered notes.

Mr. Mather: If your Honor please, that is the only question in the case. It is the position of the Respondent that the notes were not in registered form or obviously they weren't notes that had cou-

pons attached and, accordingly, they don't come within the provisions of 17F.

The Court: Does your stipulation of facts give the facts relating to the circumstances under which the notes were originally issued?

Mr. Horrow: Your Honor, they do not, because there is no contention here with respect to whether the notes were registered at the time they were originally issued. In fact, we concede that they were not registered at the time they were originally issued and we have simply stated in the stipulation the fact of issuance and the amount of the original indebtedness evidenced by the notes.

The Court: The notes were issued by the Lamm Lumber Company, is that correct? [6]

Mr. Horrow: Correct, your Honor.

The Court: Where is that located?

Mr. Horrow: Lamm Lumber Company is an Oregon corporation located at Modoc, Oregon.

The Court: Originally there were two notes, one for \$150,000 and one for \$250,000. They were made payable to the order of Consolidated Securities Company and were secured by a mortgage on a railroad owned by the Lamm Lumber Company. Now, are we to understand that the Consolidated Securities Company held those two notes itself?

Mr. Horrow: Now, we have stipulated that the Southern Pacific Land Company was at all times prior to July 1, 1941, beneficial owner of the notes, mortgages, and certain operations.

The Court: Well, the notes, then, were held under a trust agreement?

Mr. Horrow: That is correct.

The Court: Well, let me see. That transaction would probably have been something like this: The notes, the mortgage on the railroad was covered by a mortgage in trust indenture, probably, is that right?

Mr. Horrow: There was a deed of trust securing the notes which covered various properties of the Lamm Lumber Company, principally timber. The mortgage is not part of the record, mortgage and deed of trust.

The Court: The terms for the payment of the notes [7] would be set forth in that trust indenture, wouldn't they?

Mr. Horrow: No, your Honor. The terms and conditions covering payments of the notes were in the notes as originally issued and these terms were later modified in 1936. A copy of the modifying agreement is a part of Exhibit 1-A.

The Court: But I wanted to ascertain whether the original notes were ever sold to any other owners than the Southern Pacific Land Company?

Mr. Horrow: No, your Honor. The stipulation shows that the notes were originally issued with the Southern Pacific Land Company as the beneficial owner, although they were payable to Consolidated Securities Company.

The Court: As the trustee?

Mr. Horrow: The Consolidated Securities Company was simply a nominee or agent of the Southern Pacific Land Company.

The Court: So that the first time that interests

were sold in these notes was when the Petitioners in this proceeding and some others who are listed on one of the exhibits purchased undivided interest in the notes; is that correct?

Mr. Horrow: That is correct. There were 19 individuals who acquired interest in the notes in 1941, of whom 15 of those individuals are Petitioners in these proceedings.

The Court: Now, the modification of the original agreement, you say, is introduced in evidence in this case as Exhibit 2-B, is that correct? [8]

Mr. Horrow: No, your Honor. It is a part of Exhibit 1-A and appears on Pages 44 to 48 inclusive of the Stipulation.

The Court: I wonder if you would kindly describe the terms of that agreement briefly so that when the testimony of your witnesses is given it will be better understood, perhaps.

Mr. Horrow: The agreement changed the rate of interest which was to be effective, and for our purposes it is sufficient to point out that the rate was to be three per cent per annum from February 1, 1938, until payment. The obligor under the notes was the Lamm Lumber Company and was obliged to pay \$10 for each carload of lumber transported over its railroad, \$5 for each carload of logs transported over the railroad, and the agreement covered the manner of applying the sum so paid by the Lamm Lumber Company. The agreement further provided that all of the terms and conditions of the notes evidencing the indebtedness were to remain in

full force and effect except as modified by this agreement.

The Court: The obligor had defaulted to some extent, is that correct?

Mr. Horrow: That is correct, your Honor.

The Court: What was the nature of the default?

Mr. Horrow: Well, simply an inability to meet the payments provided for in the notes.

The Court: Interest or also principal? [9]

Mr. Horrow: There was a default both as to principal and interest.

The Court: Well, then, what was the total indebtedness that was covered by the agreement which appears on Page 44?

Mr. Horrow: Paragraph 5 of the Stipulation shows that the principal of the indebtedness as of January 1, 1938, was \$497,845.

The Court: What page is that on?

Mr. Horrow: Page 11 of the Stipulation. I might say that the agreement in 1936 which I referred refunded the accrued and unpaid interest due January 1, 1938.

The Court: As I understand what I am reading on Page 44 there was unpaid and accrued interest in the amount of \$127,939.20, is that right? The original amount of the notes is \$400,000?

Mr. Horrow: That is correct. Those recitals appear——

The Court: Well, has the principal of the notes been reduced at all?

Mr. Horrow: I don't believe the principal has been reduced at all.

The Court: Now, in general, is this the kind of situation that existed: There were defaults on the notes and agreement was entered into with the holder of the notes to reduce the amount of the interest to be paid after January 1, [10] 1941. Is that the date?

Mr. Horrow: January 1, 1938.

The Court: January 1, 1938. Now, this question that might be of some importance. Did the parties agree that the principal amount of the indebtedness should be increased to include an accrued interest up to the time of the supplemental agreement?

Mr. Horrow: That was agreed, your Honor. The principal was restated as of January 1, 1938.

The Court: All right. Now, when did the Petitioners in this proceeding acquire an interest in these notes?

Mr. Horrow: On or about July 1, 1941.

The Court: July 1, 1941. Do you call it a re-funding agreement under which the interest was added to the principal?

Mr. Horrow: Well, that could be one description of the agreement. Actually, the agreement of 1936 was designed to take care of defaults which had already occurred and restate the indebtedness and provide for the satisfaction of that indebtedness, too. There were certain changes made in the manner of payment.

The Court: We can refer to it, then, as the 1936 agreement.

Now, between 1936 and 1941 did the Southern Pacific Land Company continue to be the beneficial owner of the notes?

Mr. Horrow: Yes, your Honor. It is so stipulated. [11]

The Court: The 1936 agreement was with the Consolidated Securities Company which was a nominee of the Southern Pacific Land Company, so for all practical purposes, no doubt the 1936 agreement was with the Southern Pacific Land Company?

Mr. Horrow: That is correct.

The Court: Then who offered the interest in the notes, the Consolidated Securities Company to these Petitioners and others?

Mr. Horrow: The stipulation on Page 12 shows that the offer was actually made by the Southern Pacific Land Company, the parent of Southern Pacific Land Company on behalf of Southern Pacific Land Company.

The Court: I will try to come to the end of these questions as soon as possible, but I am not quite sure yet what the relationship of these taxpayers is to the debtor. Now, of course, the Lamm Lumber Company was the obligor under the notes. A holder of the notes sold interest in the notes at a discount, isn't that true?

Mr. Horrow: That is correct.

The Court: To the Petitioners in this proceeding and others. Then the Southern Pacific Companies, whatever they were, their names are not

too important at this moment, they were out of the picture, is that right?

Mr. Horrow: After the offer was accepted and the Southern Pacific Land Company was paid the purchase price of these [12] notes, the Southern Pacific Land Company had no further interest in this matter.

The Court: And they presumably took a loss, did they, on the transaction?

Mr. Horrow: I have no knowledge of how the Southern Pacific Land Company accounted for this transaction.

The Court: I don't mean from a tax standpoint, but from a fact standpoint.

Mr. Horrow: I have no——

The Court: Did they pay the face amount of the notes to Lamm Lumber Company originally?

Mr. Horrow: I have no knowledge as to whether the loss was considered as having resulted in prior years or whether through a write-down of the indebtedness or whether Southern Pacific Land Company considered that the company sustained a loss at the time the notes were sold.

The Court: But do you understand that there was a payment originally in the face amount of these notes to the Lamm Lumber Company by the vendee, whoever it was, Consolidated Company or Southern Pacific Land Company? Is that your understanding?

Mr. Horrow: Yes, the notes evidenced advances that were made in the face amount of the notes.

The Court: Now, then, you have stipulated what

the group of second purchasers paid for interest in these notes, [13] and could you give me that just for purposes of my effort to arrive at a quick understanding of the facts?

Mr. Horrow: Well, we have stipulated that the Petitioners, together with the other individuals who purchased interest in these notes, became aware of the willingness of the Southern Pacific Land Company to sell these notes at a discount and in order to avail themselves of the investment opportunity thus presented they offered to purchase these notes at 50 per cent of the face amount of the indebtedness.

The Court: Was that done in one transaction? Was there a lump sum payment?

Mr. Horrow: That was done in one transaction. The stipulation shows that the individuals purchased undivided fractional interest in these notes for the total sum of \$206,388.55, which was one-half of the principal indebtedness of the notes as of July 1, 1941.

The Court: Well, I believe I have one more question, Mr. Horrow. I don't understand something. The face amount of the notes was originally \$400,000. There were defaults and some accruals of interest. Then there was an agreement, the 1936 agreement, under which the holders of the notes and the debtor on the notes agreed to a reduction in the debtor's obligation upon all of the indebtedness and that then brought the indebtedness down to a certain amount as of January 1, 1936. [14]

Mr. Horrow: There was no reduction in the indebtedness, your Honor.

The Court: There was not?

Mr. Horrow: Restatement of the indebtedness and a reduction of the interest payable.

The Court: All right. The accruals of interest, or whatever else was in default, I presume, was added to the principal.

Mr. Horrow: That is correct.

The Court: This interest was to be paid at a reduced rate upon an increased amount of principal. Would that be right?

Mr. Horrow: That is correct.

The Court: Then there was an indebtedness under an agreement which is called the 1936 agreement. Now, that agreement remained unchanged, isn't that correct, for purposes of these taxpayers?

Mr. Horrow: Paragraph 11 of the Stipulation shows that the indebtedness was reduced from 1938 to 1941 to \$411,264.99.

The Court: Paragraph 11?

Mr. Horrow: Page 11.

The Court: Page 11 of the Stipulation?

Mr. Horrow: Of the Stipulation.

The Court: It was reduced by payments or was reduced [15] by agreement.

Mr. Horrow: Reduced by payments on the debt in accordance with the agreement.

The Court: What is that figure again?

Mr. Horrow: \$411,264.99. That appears at the

bottom of Page 11 of the Stipulation.

The Court: I have it now. That is the indebtedness of the Lamm Lumber Company which these Petitioners and a few others purchased for \$206,388, is that right?

Mr. Horrow: The Lamm Lumber Company was not a party to this purchase.

The Court: If, in asking you any questions at this time, I appear to get into an area that is part of the issue to be decided, please don't be disturbed about that. I am just asking for information now. I am not asking you to agree to anything.

What I am trying to get at is this: I will ask the question again—the Petitioners in this proceeding purchased undivided interest in these notes at a discount from the Southern Pacific Company. The principal amount of these notes as modified by the 1936 agreement would represent the obligations of the Lamm Lumber Company.

Mr. Horrow: That is correct.

The Court: The Lamm Lumber Company remains the obligor but the holder of the notes changes from the Southern [16] Pacific Company to these new people.

Mr. Horrow: That is correct.

The Court: If the Lamm Lumber Company should be able to meet the full amount of its indebtedness, then this second group of note-holders would expect to receive more than they paid for their interest in these notes. That is what I am trying to get at.

Mr. Horrow: That is correct.

The Court: That is enough to give me an understanding of the facts so that I will understand any testimony that is given.

Is there anything further that you would like to point out at this time?

Mr. Horrow: No, you Honor. I think we have sufficient to——

The Court: Mr. Mather, is there anything further?

Mr. Mather: Nothing except the tax arises by the Lamm Lumber Company paying off these notes in the amount of the indebtedness of \$411,264.99, which it cost these Petitioners half of that amount.

The Court: Then that is the final fact I didn't come to. The notes, then, were paid by the Lamm Lumber Company in what year, 1943?

Mr. Horrow: The notes were retired by payment in full in 1943. [17]

The Court: '43. Will your testimony show how the American Trust Company came into the picture? What its function was and all of that, or is that covered by the Stipulation?

Mr. Horrow: That is covered in part by the Stipulation, but the testimony will amplify that.

The Court: How many witnesses will you have?

Mr. Horrow: We have one witness.

The Court: Then I expect I should ask a little information—ask for a little enlightenment now on the point of function of the American Trust Company. That seems to be covered in Paragraph 7 of the Stipulation, is that right?

Mr. Horrow: This is covered in Paragraphs 7 to 9 of the Stipulation.

The Court: In just a brief statement, what was the American Trust Company to do?

Mr. Horrow: The American Trust Company maintained a record of ownership of interest in these notes. It received the payments of principal and interest made by the Lamm Lumber Company and paid these amounts to the owners of interest in these notes.

The Court: It was a collection agent, collection and paying agent, is that right?

Mr. Horrow: Your Honor, I might say that that involves in part the issue in this case. The exact nature of [18] the American Trust Company's function, I think, is in controversy here. It is our position that the American Trust Company without regard to what other capacity it acted in, acted as a registrar and maintained a registrar of ownership so that the indebtedness was in registered form at the time of retirement.

The Court: Exhibit 2-B is instructions and agreement. Is it a letter addressed to the American Trust Company by somebody?

Mr. Horrow: It is an agreement entered into between the American Trust Company and each of the individuals who acquired an undivided interest in the notes.

The Court: 2-B is—Exhibit 2-B is on Page 50.

Mr. Horrow: Exhibit 2-B is the agreement I had referred to.

The Court: Now, that exhibit is a copy, an un-

executed copy of either an agreement or letter of instruction. Whatever it is we will no doubt learn later, but it is in the form of a letter from the American Trust Company to somebody. The salutation is "Gentlemen." Now, to whom—is that supposed to be addressed to someone who has an interest in these notes? I wonder if we are looking at the same thing?

Mr. Horrow: Exhibit 2-B is in the form of a letter agreement.

The Court: Is in the form of an—I didn't hear you. [19]

Mr. Horrow: Of a letter agreement.

The Court: Of a letter agreement.

Mr. Horrow: The agreement was executed, as we have shown in the Stipulation, by each of the owners of the notes separately in that each individual signed a counterpart of the agreement, a form of which is a part of the Stipulation. The American Trust Company executed each of the counterparts.

The Court: Now, in Exhibit 2-B there are 12 notes listed. That is a matter of fact that I didn't understand at first. According to the Stipulation, as I was able to understand, reading it over quickly, I thought there were just two notes in the face amount of \$150,000 and \$250,000 originally issued by the Lamm Lumber Company. Now, that isn't true, is it?

Mr. Horrow: The Exhibit 2-B shows the two notes of \$150,000 and \$250,000 were issued in 1930. The other notes cover these interest amounts that

were restated as a part of the principal under the agreement of 1936.

The Court: I see. That is as the accrued and unpaid interest. Now, the interest rate on the books is 5½ per cent, is that right? I thought that was reduced?

Mr. Horrow: Well, that was the amount shown originally but the 1936 agreement provided that the interest would accrue after January 1, 1938, at 3 per cent.

The Court: So that the detail in the letter [20] which is Exhibit 2-B relating to interest rates only sets forth the original amount of the interest which was specified in the notes and we understand that when these noteholders got them they were to be paid only 3 per cent interest; is that right?

Mr. Horrow: That is covered by the agreement of 1936, Page 45 of the Stipulation. The various interest rates that are applicable during these periods as specified in that agreement.

The Court: Does the letter 2-B have a date to it?

Mr. Horrow: We have stipulated the date of the agreement as July 15, 1941.

The Court: That is at the end of the letter. I would like to take a recess for just a minute, Mr. Horrow, and then you call your witness, if you will excuse me.

(Short recess.)

The Court: Call your witness, please.

Mr. Mather: If your Honor please, before the witness is called you asked the question of what the American Trust Company was the collection

agency for these notes? It is the position of the Respondent that the American Trust Company was the collecting agency for these notes appointed by these Petitioners pursuant to Exhibit 2-B.

Mr. Horrow: If your Honor please, I will call Mr. Francis Whitmer as witness for the Petitioners.

Whereupon, [21]

FRANCIS E. WHITMER

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Horrow:

Q. Will you give your name and address?

A. Francis E. Whitmer. The address is 464 California Street, San Francisco.

Q. What is your occupation, Mr. Whitmer?

A. Trust Officer of American Trust Company.

Q. You have been subpoenaed to appear as a witness in these proceedings? A. I have.

Q. What are your duties as Trust Officer?

A. I am Assistant General Manager of the Trust Department for the American Trust Company and its trust branches.

Q. What activities of the American Trust Company are under your supervision?

A. The safekeeping and custody accounts. What we call private or living trusts are the primary re-

sponsibilities and, in a general way, internal operations.

Q. Do you also have supervision over registration of corporate securities? A. I do. [22]

Q. Was that true during the year 1941, Mr. Whitmer? A. It was not.

Q. You were in the Trust Department of the American Trust Company at that time?

A. I was.

Q. You are familiar with the activities which you now have supervision over? A. I was.

Q. You were in the Trust Department throughout the period from 1941 up to the present time?

A. No, that is not correct. I was in the Trust Department up until September 15 of 1942, was then transferred to the Personnel Department and remained in the Personnel Department until September 15, 1945. I then returned to the Trust Department.

Q. Are you familiar with the account of the American Trust Company designated in its records as "Agency Account, Mrs. Edith Lamm, et al."?

A. I am.

Q. You were in the Trust Department at the time this account was established? A. I was.

Q. Do you have with you the records of the American Trust Company pertaining to this account? A. I do. [23]

Q. You have seen a copy of the Stipulation of Facts, Mr. Whitmer, which has been filed in this case? A. I have, yes, sir.

Q. I direct your attention to Exhibit 3-C of that Stipulation, appearing on Page 55, and Page 56 of

(Testimony of Francis E. Whitmer.)

the Stipulation. I direct your attention to the words, "Correct Final List," appearing thereon. Are those words in your handwriting on the original list? A. They are, yes, sir.

Q. You have with you the original list, copy of which I referred to? A. I do, yes.

Q. I direct your attention to the deletion of the words "Natural Guardian" appearing on Page 55, Exhibit 3-C, of the Stipulation and the insertion of the word "Trustee." Is that in your handwriting, Mr. Whitmer? A. On the original, yes.

Q. What was the reason for the deletion of the words "Natural Guardian" and the substitution of the word "trustee" on the original list?

A. When the American Trust Company received the executed counterpart of this letter of instructions or agreement it had been executed by Alice McCourt Lamm, Natural Guardian for Winifred Carol Lamm. We wrote her a letter asking if, in fact, she was intended to sign that as the natural guardian [24] or whether she meant her just to be the owner of that interest in some other capacity.

Q. Do you have with you a copy of that letter?

A. I do. I have a copy of the letter that went to her and also the original of her response.

Q. Will you produce the copy of that letter addressed by the American Trust Company to Alice McCourt Lamm? A. (Producing document.)

Mr. Horrow: Your Honor, I offer in evidence the letter just referred to as Petitioner's exhibit next in order.

Mr. Mather: No objection.

(Testimony of Francis E. Whitmer.)

The Court: Received in evidence as Exhibit 5.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 5.)

PETITIONER'S EXHIBIT No. 5

August 26, 1941

Mrs. Alice McCourt Lamm
Modoc Point,
Oregon.

Dear Mrs. Lamm:

We have received from Mr. H. E. Nowell the agreement signed by you as "Natural Guardian for Winifred Carol Lamm," relating to the participation in the acquisition of the Lamm Lumber Company's obligation. If you were in fact acting as guardian for Winifred's property it would be necessary, according to the advice of our attorneys, for you to institute legal proceedings to have yourself formerly appointed guardian before we could recognize your signature to the agreement or pay you money. Upon discussing the matter with Mr. Nowell, however, he informs us that the money does not represent property belonging to Winifred but that on the contrary it represents funds contributed by her parents and her grandmother and turned over to you for the express purpose of avoiding any conditions giving rise to a need for legal guardianship. At Mr. Nowell's suggestion we have prepared the enclosed letter which sets forth the

(Testimony of Francis E. Whitmer.)

facts as he has presented them to us. If agreeable, we shall appreciate your changing the letter in any necessary respects, after which kindly have it signed by Winifred's father, grandmother, and yourself, and return it to us.

Very truly yours,

/s/ B.

B. B. BROWN,

Vice President and Trust
Officer.

Enclosure.

Edith Lamm, et al. A-3726.

Admitted November 15, 1949.

Q. (By Mr. Horrow): Did the bank receive a reply from Alice McCourt Lamm to that letter?

A. It did, yes.

Q. Do you have a copy of that reply?

A. I do.

Mr. Horrow: I offer in evidence, your Honor, a copy of a letter addressed by Alice McCourt Lamm to the American Trust Company dated August 28, 1941.

Mr. Mather: No objection.

The Court: Received in evidence as [25] Exhibit 6.

(The document referred to was received in evidence and marked as Petitioners' Exhibit No. 6.)

(Testimony of Francis E. Whitmer.)

PETITIONERS' EXHIBIT No. 6

August 28, 1941

American Trust Company
464 California Street
San Francisco, California

Gentlemen:

This refers to the "Instructions and Agreement" addressed to you, dated as of July 15, 1941, relating to an obligation of the Lamm Lumber Company and signed by me as "Natural Guardian for Winifred Carol Lamm." The \$12,000 to pay for the 5.835653 percentage participation covered by the said agreement, represents \$4,000 placed in my hands by Winifred Carol Lamm's father, \$4,000 placed in my hands by her grandmother, and \$4,000 of my own funds set aside for her benefit. It was the understanding that this money would be held by me as Trustee for Winifred's benefit, to be used to purchase the participation in the Lamm Lumber Company's obligation, and generally to be dealt with by me as Trustee with all the powers of an absolute owner. You are requested to change your records to show this interest as belonging to "Alice McCourt Lamm, Trustee for Winifred Carol Lamm."

Very truly yours,

/s/ ALICE McCOURT LAMM.

We join in the foregoing statement and request.

/s/ W. E. LAMM,

/s/ MRS. EDITH LAMM.

Admitted November 15, 1949.

(Testimony of Francis E. Whitmer.)

Q. (By Mr. Horrow): Referring to the account designated "Agency Account," Mrs. Lamm, et al., was that account opened at your direction, Mr. Whitmer? A. It was.

Q. What procedure was followed in opening the account with the American Trust Company?

A. The notes referred to were delivered to us and the various parties in interest each executed a counterpart of the letter of instructions and agreement. When those were all informed and we had received this list of the owners, referred to as correct final list, or Exhibit 3-C, the notes were placed in the file and it became my responsibility to give a notice to each of the persons working in the Trust Department who would have supervision over some activity in the management of the account.

Q. What form did that notice take?

A. What we call an internal memorandum which is really an office memorandum, or letter of instructions.

Q. Do you have a copy of that memorandum, Mr. Whitmer? A. I do.

Mr. Horrow: Your Honor, I offer in evidence as Petitioners' Exhibit next in order the memorandum referred to [26] by the witness dated August 27, 1941.

Mr. Mather: No objection.

The Court: It is received in evidence as Exhibit 7.

(The document referred to was marked and received in evidence as Petitioners' Exhibit No. 7.)

(Testimony of Francis E. Whitmer.)

PETITIONERS' EXHIBIT No. 7

Memorandum

August 27, 1941

To: Mr. R. O. Boyer

Mr. Gus G. Conlan

Mr. W. G. King

Mr. Dave Stearns

Trust Auditor

Trust Files

From: Mr. Francis E. Whitmer

Assistant Trust Officer

Re: A-3726 Mrs. Edith Lamm, et al.

The above is a new Agency Account under Letter of Instructions signed in counterpart by 19 owners, the Letter being dated July 15, 1941.

Mr. King is handed herewith list of owners showing the proportionate interest of each in the total. They are to share in the income and net principal payments in the proportion therein shown. Income and principal are to be kept separate for accounting purposes and each of the owners provided with a statement quarterly, beginning December 10, 1941, showing receipts and disbursements of interest and principal.

Mr. Conlan will please have recorded in Lake County and Klamath County, Oregon, the Assignment of Mortgages dated July 9, 1941, now held by us.

(Testimony of Francis E. Whitmer.)

Mr. King will please pay to Mr. H. Edwin Nowell from income on hand \$676.05. The Instructions and Agreement signed by owners indicate that this payment should be made from principal, but this is incorrect as the amount represents a reimbursement to Mr. Nowell for accrued interest paid out by him in the acquisition of the notes of Lamm Lumber Company representing the corpus of this account. Inasmuch as we have received payments from Lamm Lumber Company, this payment to Mr. Nowell can be made at the present time and will show on our first statement to the owners and thus clear itself.

Quarterly, beginning September 10, 1941, we are to send each of the owners separate checks for their shares of the principal and their shares of interest. Our charges are to be deducted from principal. The schedule of fees to be paid to us is as follows:

(a) Acceptance fee—\$500.00.

(b) Annual Fee—\$100.00 plus 1/10 of 1% of the unpaid balance of principal at the beginning of each year.

The papers are dated July 15, 1941, and the principal indebtedness at the beginning of this account is \$411,264.99, therefore the first year's fee will be the \$100.00, plus \$411.26, or a total of \$511.26.

(c) Closing fee—\$250.00.

Any fees paid by Lamm Lumber Company on

(Testimony of Francis E. Whitmer.)

account of the above are to be credited before making our charges against the principal.

Yours very truly,

/s/ J. V.

FRANCIS E. WHITMER,
Assistant Trust Officer.

Admitted November 15, 1949.

Q. (By Mr. Horrow): Directing your attention to the second paragraph of Petitioners' Exhibit 7, Mr. King is handed herewith list of owners showing the proportionate interest of each in the total. To what does that have reference, Mr. Whitmer?

A. That would be a copy of the list of owners which I had marked "Correct Final List," showing the percentage interest that each had in the indebtedness, so that Mr. King, who was in charge of the Bookkeeping Department, would have that to work from as payments came in to us.

Q. Did Mr. King have a copy of the original list, a copy of which is Exhibit 3-C, or did Mr. King have the original?

A. Mr. King was handed with my memorandum a copy of this list.

Q. Where was the original kept, Mr. Whitmer?

A. In what we would call the documentary section of our file. We undertook to segregate the correspondence and letters of instructions from the

(Testimony of Francis E. Whitmer.)

owners. We also sometimes referred to the file as the legal file. [27]

Q. Did the notes remain in the possession of the American Trust Company until they were paid in full in 1943? A. So far as I know.

Q. Your records show what was done with those notes when they were paid in full in that year?

A. Yes.

Q. Would you state what was done?

A. They were returned to the debtor.

Q. Were they marked "cancelled"?

A. Yes.

Q. Will you describe the procedure followed in receiving payments from the Lamm Lumber Company and making disbursements of such amounts?

A. Well, each time a payment came in from the Lamm Lumber Company in the amount of interest up to the—I believe they were all calculated to the first of the month—interest would have been calculated and the amount of that interest posted on our—what we call an income cash ledger sheet. The balance would have been treated as principal and posted on the principal cash ledger sheet and then we keep a subsidiary ledger of all notes and contracts that are due to us whether they are secured or not and the Bookkeeping Department would have made a similar entry to that ledger showing the amount of interest and principal and calculating the new balance. That would be the receipt of the money and our [28] disposition of it and then the

(Testimony of Francis E. Whitmer.)

amount of interest and principal would be apportioned among each of the owners in accordance to the percentage shown on this letter, a copy of which Mr. King had. He maintained a work sheet so that on each disbursement the income was disbursed separately and principal was disbursed separately to these individuals shown on this list in accordance with that percentage.

Q. You were referring to the percentage shown on the list which was submitted to Mr. King under the memorandum, Petitioners' Exhibit 7?

A. That is right. I don't know whether you are interested in the internal operations beyond what the bookkeeper does, but I can describe it to you.

Q. Would you describe the practice followed by the bookkeeper in making payments?

A. We have a bookkeeper whose duty it is to work only on what is called this custodian or safe-keeping or agency desk. It is a girl whose duties are completely handling all receipts of income and principal and all disbursements of income and principal. When this account was first set up it would have been her duty to make up a card for each one of these participants. The card is just a little working card showing the name of the account, when the payments are anticipated, because they are kept in chronological file, and the name of the person and the percentage in this case of their [29] interest in both the income and principal. Those cards are kept together. This was the January, April, July, October transaction. They would have been filed together.

(Testimony of Francis E. Whitmer.)

First in January and then when the January transaction was completed they would have been moved to the section of the file for April anticipation so that as the girl goes through her work she is able to tell whether there are any items anticipated that have not in fact been received, and then when the payment would come in from the Lamm Lumber Company she would withdraw these cards bearing upon this account from her file and calculate these percentages and then hand the calculation to Mr. King for checking, and then if the list were returned to her as being correct she would actually type up the checks ready for signatures of the two persons who have to sign under our internal operating roles, have to sign each of the checks. They would be then returned to Mr. King and he would second-check them to be sure that the amounts of the interest and principal were actually typed up in accordance with that list and then after having signed them officially on behalf of the Bank he would have returned them to the typist and she would have typed an envelope ready for the check to be mailed out. Now, in order that each one of these people could have a complete statement of the transaction, we prepared a statement to accompany the check which showed the total amount of interest and principal that came in from the Lamm Lumber Company [30] and the amount of the division among the participants and a statement at the end of that list as to balance of principal that was due

(Testimony of Francis E. Whitmer.)

from the Lamm Lumber Company upon this indebtedness.

Q. This list to which you have referred against which these disbursements were checked is the list, a copy of which is Exhibit 3-C?

A. That is right.

Q. Under the practice followed by the bank in connection with this account, would payment be made to any persons not shown on such list?

A. No, because that represented 100 per cent of the ownership, or our record of 100 per cent of the ownership.

Q. What was done with the card records?

A. Those are maintained until anywhere from a year to a year and a half. The account is closed and final statements have been rendered to the owners, and then because they are strictly internal operating records of no particular permanency or significance they are destroyed.

Q. The card records with respect to this account have been destroyed, is that correct?

A. That is the little individual card records, yes. We have, of course, for the permanent record a copy of the statement that was rendered to each of the owners and that becomes a part of the permanent record which is presently [31] available.

Q. Does the American Trust Company act as a registrar in connection with corporate securities?

A. It does, yes.

Q. Are you familiar with the practices followed by the bank in connection with such registration?

(Testimony of Francis E. Whitmer.)

A. I am.

Q. How is such registration disclosed on the records of the American Trust Company?

A. We keep a card record showing the name of the debtor, corporation, and the name and address of the registered owner.

Q. Is that card record purported to show the registered owner of securities for which the American Trust Company is registrar?

A. It does, yes.

Q. Are those card records similar to the card records that were kept in connection with the agency account, Edith Lamm, et al.? A. No.

Q. In what respects do the card records differ?

A. The card record for the registration of securities is divided in such a way that there is on the same card a record of bonds that are cancelled, registration in the name of the first owners and, perhaps, re-registered in the name of a purchaser. They are set up a little differently because the [32] purpose of the card is to be a history card showing the owner's name and the number of bonds owned, cancelled, and registration or picked up in registration card.

Q. Are the card records the same in that they show the owners of the indebtedness?

A. Yes.

Q. Are they the same in showing the amount of the principal of the indebtedness which is owned? A. Yes.

Mr. Horrow: That is all, your Honor.

(Testimony of Francis E. Whitmer.)

Cross-Examination

By Mr. Mather:

Q. Mr. Whitmer, in setting up this agency account, you referred to Exhibit 3-C. That was done pursuant to your letter of instructions, Exhibit 2-B, was it not, attached to the Stipulation?

A. This list that is Exhibit 3-C was not prepared in our office. That was turned in to us as the list of the owners.

Q. Pursuant to the instructions contained in Exhibit 2-B.

A. I don't want to misconstrue your question, is all, Mr. Mather. The list was furnished us as the list of the people from whom ultimately we would receive signed counterparts of the instructions and agreement.

Q. Exhibit 2-B is a signed counterpart that you received [33] from each of the individual owners, is it not?

A. This is a copy of the document which the owners signed, counterparts, yes.

Q. You have Exhibit 2-B signed by each of the individuals appearing on Exhibit 3-C?

A. That is correct.

Q. You carried out the instructions contained in Exhibit 2-B, did you not? A. Yes.

Q. The method of carrying it out is the method that you employed in the bank in carrying out those instructions? A. Yes.

(Testimony of Francis E. Whitmer.)

Q. Now, is that method any different than used by you in collecting past due promissory notes left with you for collection by other holders?

A. Well, to this extent, that we have the list of the various owners to work from where in the ordinary safekeeping account it belongs to one or two persons and any payments that come in to us are just distributed to the owners of the account.

Q. But you did have past due promissory notes that were owned by more than two persons, didn't you, at that time?

A. I would have to assume that we did. I do not know for a fact.

Q. Your procedure in making your disbursements was not [34] dissimilar in this instance than in any other instance, was it?

A. Not dissimilar, no.

Q. In other words, you followed the instructions that were given to you by the person who left the notes with you for collection?

A. That is right.

Q. In maintaining a register that you testified about with respect to register, that all pertained to stocks that were registered stocks?

A. May I correct you? The registered bonds, you mean?

Q. Well, you didn't have other than bonds that were registered that you maintained a register for?

A. Well, the stock registrations is a completely different type of activity in the Trust Department. That deals with the corporate issue where the Cor-

(Testimony of Francis E. Whitmer.)

poration Commissioner authorizes so many shares to be issued and we in Registered Securities see that the total number of shares outstanding are not in excess of the permit, but we are not interested in that type of case with who the owner is. We don't keep a record of the owner.

Q. The register you maintained was with respect to the bonds? A. That is right.

Q. Those are registered bonds?

A. That is correct. [35]

When we are the registrar of an issue of registered bonds, then we keep this record I have indicated.

Q. These promissory notes that you had for collection in the agency account, Mrs. Edith Lamm, et al., were not registered notes, were they?

Mr. Horrow: I object to that, your Honor, on the ground that it calls for a conclusion of the witness. That is the very issue in this case, your Honor.

The Court: The question, as I understand it, goes to the practice of the Trust Department and—are you able to answer that question?

The Witness: The question Mr. Mather asked?

The Court: Don't answer the question yet, but are you able to answer the question?

The Witness: I would like to hear the question again.

The Court: Read the question, please.

(Question read.)

(Testimony of Francis E. Whitmer.)

The Court: Are you able to answer it?

The Witness: I doubt it.

The Court: You don't think you can answer it.

Mr. Horrow: Your Honor, I think that calls for a conclusion of law, nothing to do with this.

The Court: There is a conclusion involved in the question, that is true, and the conclusions to be made by the Court, but if the witness were able to answer the question I [36] would overrule the objection in order to find out what the witness' understanding is, that is all. I do overrule the objection and the witness may state whether he is able to answer the question or not.

A. Well, I might make a comment on the thing without, perhaps, answering the question directly.

Q. (By Mr. Mather): I will withdraw the question.

Do you know whether these promissory notes were in registered form?

Mr. Horrow: I object to that, your Honor, as calling for the conclusion of the witness.

The Court: Objection overruled.

Mr. Horrow: Exception, please.

A. Our bonds when they are first issued are either bearer bonds or they are issued to a particular person whose name is indicated on the bond. If it is not a bearer bond, then it is registered to a person who is the owner. In the case of the Lamm notes, they were all payable to a specific person or corporation or nominee, and I think the counsel called it. Consequently, there isn't the possibility

(Testimony of Francis E. Whitmer.)

of drawing the simile between the two. They were not coupon instruments but they were registered, every one of them was registered to a particular payee.

Q. That would be true of any promissory notes, would it [37] not, wherein——

Mr. Horrow: I object.

Q. (By Mr. Mather): ——wherein these notes——

The Court: The objection is overruled, Mr. Horrow.

Q. (By Mr. Mather): ——wherein these notes differ from any other promissory note?

A. When a corporation borrows money upon a bond issue its promissory notes are in the form of a bond and they are payable to bearer generally.

Q. Well, now, you have got the notes set out here in Exhibit 1-A, and we will take it first. Now, would you point out wherein that note differs from the usual promissory note.

Mr. Horrow: If your Honor please, I object to that as argumentative, calling for a conclusion, nothing in the record to show what the usual form of promissory notes is.

The Court: Well, the witness is well acquainted with notes and various forms of notes. The objection is overruled.

Mr. Horrow: Exception, please.

A. If your point, Mr. Mather, goes to the question of the ordinary promissory note payable to an

(Testimony of Francis E. Whitmer.)

individual, I would say that it is probably in the same form or generally the same form as is used. It is quite different from a bearer [38] bond form of promissory note which has much more in the way of recitals.

Q. (By Mr. Mather): This is a promissory note, isn't it? A. Yes.

The Court: What is the witness referring to at this point?

Mr. Mather: Exhibit 1-A, \$150,000 note, dated May 6, 1930.

The Court: What page is that on?

Mr. Mather: Page 16 of the Stipulation of Facts.

The Court: Now, what is your answer, Mr. Whitmer? You say that this note is similar to most promissory notes?

The Witness: I would say it is similar to most promissory notes that were issued about that time and calls for payment in gold, for example, which is not a form customarily used now, but it generally follows the form of a promissory note **that is currently used.**

Q. (By Mr. Mather): You have examined the other notes and are familiar with the other notes that were involved in this account and that is true of all of them, isn't it? A. Yes.

Mr. Mather: That is all.

Mr. Horrow: Just a few more questions, your Honor. [39]

(Testimony of Francis E. Whitmer.)

Redirect Examination

By Mr. Horrow:

Q. Mr. Whitmer, in your direct testimony you referred to registration of corporate securities and the practice followed by the American Trust Company. That had reference to corporate bonds and debentures that are registered, is that not correct?

A. Yes.

Q. Does the American Trust Company have a department which handles the collection of notes, promissory notes?

A. We have two divisions. The corporate division is a separate activity in the Trust Division, and we have spealized personnel assigned to that. If the obligation is an obligation of a corporation which represents outstanding interests in the hands of the public, that is handled by the Corporate Division. The other division is the Accounting Department, which handles living trusts, testamentary trusts, probates, things of that sort.

Q. I am talking about debts turned over to the American Trust Company by its customers for collections. What department handles such activities?

A. We refer to it as the "Cage." It is a group of people who receive the obligations, set up the necessary records, and then must account for all principal transactions and then we have a separate accounting department that actually handles [40] the cash.

Q. Is that in the Trust Department?

(Testimony of Francis E. Whitmer.)

A. Those are all part of the Trust Department, yes.

Q. In such cases does the Bank maintain a record, a card record, of ownership such as you have referred to in connection with the Lamm Account?

A. Yes.

Q. Does it also have a list of ownerships such as we have referred to in connection with the Lamm Account?

A. Ordinarily it would not be necessary, because the names of the owners would be the depositors with us, but their names would appear on the record as the account owner. In this case we had many owners and so it was necessary to keep a list of them.

Q. Now, referring to the transfer of registered corporate bonds or debentures, such transfer effected by a change in the card records would appear on the books of the register—registrar?

A. Yes.

The Court: Now, that question is whether—read the question, please.

(Question read.)

Mr. Horrow: I will repeat that, your Honor.

Q. (By Mr. Horrow): In the change of ownership in connection with registered [41] and corporate bonds or debentures effected by a change in the name of the record owners appearing on the card records, to which you have reference?

A. Yes.

(Testimony of Francis E. Whitmer.)

The Court: Then I will have to interrupt you there, Mr. Horrow, to ask another question. The question was stated twice and you will notice that Mr. Horrow asked you whether the change was effected by you. He used the words "effected by a change on the card." Do you know the meaning of "effected by"? It means to bring about. Now, it is the Court's understanding that when registered bonds are issued that the instrument has the name of the payee owner written in the bond, isn't that correct?

The Witness: Not necessarily.

The Court: Not necessarily. Is that sometimes correct?

The Witness: Ordinarily the face of the bond would indicate that the bond was payable to bearer, or if it is registered, to the registered holder, and on the back of the bond——

The Court: Just the words "registered holder" are used on the face of the bond?

The Witness: On the face of the bond.

The Court: One other point, the bond has a number, doesn't it? [42]

The Witness: Yes.

The Court: On the back of the bond.

The Witness: There is what, for lack of better words, might be called a box printed on the back of the bond, a place for a date.

The Court: Yes.

The Witness: And a place for the name of the registered owner and a place for a signature of an

(Testimony of Francis E. Whitmer.)

authorized officer of the registrar with some language on top of the box which says, "No writing shall be made in this box except by the registrar," and then that constitutes the registration of it.

The Court: Well, then, if I understand you correctly, this would be the situation: the Trust Company is appointed by the Zellerbach Paper Company as registrar of its 4½ per cent bonds. That is done by a separate instrument. Mary Smith becomes the owner of registered bond for \$5000, Bond No. X582. The bond is issued by an issuing agent of some kind. That is to clear through the registrar department some way. A card is made up with——

Mr. Horrow: If your Honor please——

The Court: May I just continue this, please?

A card is made up for Bond No. X582 in the name of Mary Smith and her name is inserted and probably the date that she became registered owner of the bond. Now, Mary Smith [43] decides to sell her bond to her brother Tom Smith. That Bond X582 has to be turned over to the registrar, doesn't it, and doesn't the registrar have to write on the back of that bond, "Tom Smith," and the date that he became an owner, and then change it and add the name of Tom Smith and the date of his ownership onto the card that the registrar holds for Bond No. X582.

The Witness: The answer calls for some explanation, your Honor, if I may give it.

The Court: I guess you can answer that "Yes" or "No." I expect you may have to retrace that

(Testimony of Francis E. Whitmer.)

and tell me whether the example is right or wrong, but what I want to find out is how the bond itself evidences the change of ownership.

Mr. Horrow: If your Honor please, I have a specimen of a form of registered bond in connection with——

The Court: Is it just a form, Mr. Horrow?

Mr. Horrow: It is identical.

The Court: Is it just a specimen?

Mr. Horrow: It is identical in all respects, except that the bond is not actually issued.

The Court: May we just have that received later, then? I would like to just ascertain this for myself. Now, Mr. Whitmer, would you explain to the Court exactly what happens as far as the bond is concerned. We can understand what your card record is, but what happens to the instrument itself? [44] A bearer bond can be transferred without any notation on the instrument itself. It is payable to the bearer, so if Mary wants to sell her bond to her brother Tom she just hands the bond over to him and he can receive payment of that bond simply by presenting it, isn't that true?

The Witness: No, not quite, your Honor. If the bond were registered in the name of Mary Smith and she wished to——

The Court: I was talking about a bearer bond. It is true with respect to a bearer bond?

The Witness: It passes by delivery only.

The Court: Now, with respect to a registered bond, let me just ask you this question: If Mary

(Testimony of Francis E. Whitmer.)

Smith wants to sell her registered bond to Tom Smith, doesn't her registered bond have noted on the back of it the name of Tom Smith?

The Witness: It would not have to in order to constitute a sale from her to her brother.

The Court: I didn't ask you whether it had to constitute a sale. I asked you whether it had to in order to take care of the requirements of a registered bond.

The Witness: No. The answer to your question, then, would be "No."

The Court: You don't note anything on the back of the registered bond. I thought you just said that you did.

The Witness: Well, I may be misunderstanding your [45] Honor. If she wants to transfer the ownership of the bond to her brother, she would either probably sign what is called a bond assignment, a separate assignment of the instrument, and attach that to the bond. Then it becomes a bearer bond unless the bond assignment form has been executed to him personally.

The Court: Yes.

The Witness: If it is executed to him personally then he has an alternative either to present that bond for registration in his own name or he in turn could sell it to someone else if it is in blank, because once the bond assignment is executed in blank with signatures properly witnessed and guaranteed, the bond becomes a bearer instrument.

The Court: That wasn't my question. My ques-

(Testimony of Francis E. Whitmer.)

tion assumed that Mary Smith was the registered owner of the bond and Tom Smith wants to become a registered owner of the bond too. He buys it from her and he wants his bond to be registered also, and he does have it registered. How does the bond look then after he has done all that he should do to have it registered?

The Witness: The second line, if this were an original issue showing Mary Smith as the owner, the second line of the registration box would then have a new date in it and a new registered name put in and a new signature of an authorized officer of the registrar.

The Court: And in order to effect that there would [46] be an instrument of assignment executed by Mary Smith to Tom Smith.

The Witness: That is correct.

The Court: If she executed an assignment in blank, that would make her bond a bearer bond?

The Witness: That is correct.

The Court: But if she executes the assignment by saying that the bond—she assigns the bond to Tom Smith, then he may, if he wishes to, have it registered and you will accept that assignment and register it in his name, is that right?

The Witness: If the assignment is in correct form, yes.

The Court: If it is in correct form, but you do have a separate form that is made up for the owner of a registered bond to execute, isn't that right?

The Witness: That is right.

(Testimony of Francis E. Whitmer.)

The Court: Then you keep that in your records in connection—in your records of that issue of registered bonds, don't you?

The Witness: The bond assignment form?

The Court: Yes.

The Witness: Yes, we do.

The Court: That is part of the duty of the registrar of bonds, isn't that correct? [47]

The Witness: That is correct.

The Court: Would you like to offer that blank form now?

Mr. Horrow: I would like to have some testimony from the witness in connection with it, your Honor.

The Court: One other thing. After the bond has been assigned and presented to you for registration, at the same time you make the changes on the cards which you keep?

The Witness: Yes, we make a record before the bond is actually signed by the authorized officer and accompanying form must go along with the information, his signature also will be a posting medium within the bank showing the old owner's name and bond number and new owner's name and bond number.

The Court: You say, before the bond is signed by the issuing officer?

The Witness: By the officer making the registration.

The Court: By the officer making the registration?

(Testimony of Francis E. Whitmer.)

The Witness: Yes. That is to assure ourselves there is a posting medium it goes through so our records on these cards will then show a cancellation of the old registration and the entry of the new registration.

The Court: Then I come to this question: Were you entirely correct when you answered Mr. Horrow's question when you say that the change in the registration was effected by a notation on your cards? Isn't that only a partial answer to [48] that question?

The Witness: Yes. I didn't give full significance to the word "effected." It is all of this procedure has to be done. The acceptance of a bond, transfer form, and the entry on the back of the bond, the signature of the officer and the accompanying internal forms also duly signed transmitted to the bookkeeping department and ultimately posted upon the card record. That would all be part of the transaction which would effect the registration.

The Court: Well, I wanted to clear up that point in the witness' answer, Mr. Horrow, because the Court knows enough about the transactions to know that answer wasn't correct. That is all.

Mr. Horrow: I will show your Honor how the answer is entirely proper in the sense of registration.

The Court: I beg your pardon?

Mr. Horrow: I would like to——

The Court: Wait a minute now. What did you say?

(Testimony of Francis E. Whitmer.)

Mr. Horrow: I asked the witness with respect to registration and I will try to develop testimony from this witness which will indicate that his response with respect to the manner of changing registration on the books of the bank was correct.

The Court: Mr. Horrow, I think we may as well be rather candid about this matter. The Court understands why [49] you think that this is very important, but, perhaps, it isn't quite as important as you think it is to the decision of the question in this case, for this reason: If I may just digress here, you can ask this question later. These notes of the Lamm Lumber Company were originally made payable to the Consolidated Securities Company. Then the Consolidated Securities Company endorsed those notes without recourse to the Anglo-California National Bank of San Francisco. That is a fact which hasn't been developed from the exhibit that is attached to this stipulation, Exhibit 1-A, shows that.

Mr. Horrow: The Stipulation refers to it.

The Court: That endorsement was made on May 26, 1930. Then on July 9, 1941, the Anglo-California Bank, which held those notes for some reason or other, without recourse to the American Trust Company. Now, there they stood. The facts show that interests in these notes were sold to various people. Now, the notes, these interests, were undivided interests and no new notes were issued to each individual. The evidence of the interest of the individuals in the notes is the agreement which the

(Testimony of Francis E. Whitmer.)

American Trust Company sent out to the purchasers of undivided interests which is Exhibit what?

Mr. Horrow: Exhibit 3-C is the list of ownership which was not a part of the agreement but——

The Court: Exhibit 2-B is the means by which the purchasers of undivided interests became owners of undivided [50] interests, isn't that true, or am I incorrect?

Mr. Horrow: Your Honor, the Stipulation shows that the individuals acquired ownership by purchase from the Southern Pacific Land Company. Southern Pacific Land Company was not a party to the agreement entitled "Instructions and Agreement," Exhibit 2-B.

The Court: Well, that is right, but—well, I guess perhaps I can't go into that at this time. I would suppose that there was something in evidence to be evidence of the ownership of an undivided interest in these notes. Now, was there or wasn't there?

Mr. Horrow: There was, your Honor, and it is our position the evidence of ownership was the list which is in evidence and was maintained by the American Trust Company as the evidence of ownership.

The Court: Then the point that I was getting to is that if any one of these owners of an undivided interest wanted to transfer her interest it would be your position that the transfer of that interest would have to be reported to the American Trust

(Testimony of Francis E. Whitmer.)

Company and the transferee's name added to list 3-C, isn't that your position?

Mr. Horrow: The agreement so provides, your Honor.

The Court: The agreement, which is Exhibit 2-B.

Mr. Horrow: Yes.

The Court: It is your position, then, that the change [51] on this list in itself would be tantamount to all that is done in changing the evidence of transfer of interest in a registered bond, isn't that your position?

Mr. Horrow: That is our position, your Honor. I would like to develop that line of inquiry.

Q. (By Mr. Horrow): Mr. Whitmer, I show you a document here entitled "California-Oregon Power Company, First Mortgage Bond, Series Due April 1, 1978, 3 $\frac{1}{8}$ Per Cent." Will you tell me what that is?

A. It is a specimen form of a bond in California-Oregon Power Company with coupons attached.

Q. Was that bond registered as to principal with the American Trust Company?

A. No, this is only a specimen.

Q. Was that bond—I withdraw that question.

Was that bond issue registered with the American Trust Company as to principal?

A. I will have to say that I do not know.

Q. Referring to the document itself, and directing your attention to the language at the office of the American Trust Company and references to the

(Testimony of Francis E. Whitmer.)

American Trust Company, would that indicate to you that the American Trust Company acted as Registrar in respect to the issue of bonds, of which that is a specimen? [52]

A. At least that it was contemplated. The only reason I am demurring is that I do not know that this transaction ever was fulfilled and the bond actually issued.

Q. Is that form similar to the form used in connection with registered corporate bonds and debentures? A. Yes.

Mr. Horrow: Your Honor, I offer in evidence Petitioner's Exhibit next in order, the document referred to by the witness.

Mr. Mather: No objection.

The Court: May I see it, please?

You haven't asked the witness to refer to it.

Mr. Horrow: I intend to do that, your Honor.

The Court: You are going to ask him to refer to it.

Received in evidence as Exhibit 8.

(The document referred to was marked and received in evidence as Exhibit No. 8.)

Q. (By Mr. Horrow): Mr. Whitmer, reading from Petitioner's Exhibit No. 8, as provided in the indenture, this bond may from time to time be registered as to principal in the holder's name at the office of the Trustee at San Francisco, California, or at the option of the holder at the agency of the company at Chicago, Illinois, or at the agency of

(Testimony of Francis E. Whitmer.)

the company in the Borough of Manhattan City and State of New York on the books and records [53] of the company to be kept for that purpose at said offices and agencies and shall pass by delivery unless so registered as to principal. Such registry being noted hereon as provided in the indenture.

The line with registration on the books of the company has reference to what practice, Mr. Whitmer?

A. The practice that the registrar has of noting the name of the owner on the reverse side of the bond, signing that by an authorized officer, making up the appropriate records to show that and ultimately posting it upon a card which indicates the names and addresses of the outstanding holders of registered securities.

Q. Reading again from the specimen, Petitioners' Exhibit 8:

“After such registration no further transfer of this bond shall be valid unless made on said books by the registered owner in person or by an attorney duly authorized and similarly noted hereon, but this bond may be discharged from registry by being in like manner transferred to bearer.”

To what has “registration on said books”—to what does that refer?

A. Well, the only registration books that we ultimately keep are the cards. Those are the lists from time to time—or those are the cards from which the lists of registered [54] owners are made

(Testimony of Francis E. Whitmer.)

and those cards are kept by us on behalf of the various corporations we represent of the various issues.

Q. And the language "Notation of registry on the bond" has reference to what? I show you Petitioners' Exhibit 8.

A. It would be an entry placed on the form of the bond showing the date of registration, the name of the registered owner, and the signature of some officer of the Trust Department who was authorized to sign on behalf of his department.

Q. Does the language which I have read cover the transfer at the usual form of provisions dealing with the transfer of registered bonds?

A. So far as I recall, yes.

The Court: May I have that, Mr. Horrow? You mean by your last question, is the wording on the bond the usual wording that is inserted in the terms?

Mr. Horrow: Of a registered bond.

The Court: Of a registered bond, or inserted in a bond which may become a registered bond.

Mr. Horrow: That is correct, your Honor.

The Court: I was just reading while you were conferring with counsel.

Mr. Horrow: I was afraid the delay was by reading of Petitioners' Exhibit No. 8.

Q. (By Mr. Horrow): Mr. Whitmer, I would like to direct your attention to [55] Page 53 of the Stipulation of facts, the paragraph in Exhibit 2-B, reading as follows:

(Testimony of Francis E. Whitmer.)

“You shall not be bound to take notice of any change in the ownership of the interests of any of the undersigned unless and until there shall have been filed with you such documentary evidence as you shall consider necessary to establish such change.”

Under the practice followed by the bank in connection with this account, what documentary evidence would be required?

A. I would assume that an assignment in general form transferring the ownership or reciting that it transferred the ownership of the person executing the assignment to the named assignee properly witnessed or, perhaps, even acknowledged because some of these parties were out of the state would have been acceptable. We were not asked to recognize that because there were not any changes, but I assume that would have been adequate.

Q. Is that sort of an assignment that you would require in connection with the change of registration of a corporate bond or debenture of which you were the registrar?

A. Not form of assignment. That is customary in connection with registered bonds as a printed form which not only undertakes to transfer, but also authorizes someone to make the change on the books of the corporation. I have no such printed form with me, but it is similar in many respects to [56] the ordinary stock assignment form, except that it relates to the bond instead of to the stock certificate.

Q. Then the difference would be simply that the

(Testimony of Francis E. Whitmer.)

assignment you would require in connection with the change of interest in the ownership of these notes would be the fact that the assignment would not be a printed form?

A. Substantially that.

Mr. Horrow: That is all, your Honor.

The Court: Mr. Horrow, Exhibit 2-B on Page 51, Agreement dated May 6, 1930, covering option rights is mentioned. That is not made part of the record in this case, is it, and I was going to ask you whether it was material or not.

Mr. Horrow: It is not material, your Honor. There is a very voluminous agreement covering the option rights and also the mortgages describing the real property that secured these notes. Counsel could not see how they were relevant in these proceedings, and because they were so voluminous we did not want to encumber the record.

The Court: Then, to dispose of the question on this point I would have to ask one other question.

The agreement of May 6, 1930, is not an agreement which relates to the taking over of the notes by the people who are listed in Exhibit 3-C, is that correct?

Mr. Horrow: That is correct. [57]

The Court: Now, was there any agreement of any kind in and of itself under which the people listed on 3-C took over the notes?

Mr. Horrow: There was no written agreement of any kind. It was simply done by payment of a

(Testimony of Francis E. Whitmer.)

sum of money for assignments of interest in these notes together with the mortgages.

The Court: It does seem to me that this question may be made a little difficult by the lack of some documentary evidence on the transaction. It seems a little unusual to me for interest in notes to be acquired with so little formality. I am wondering if Mr. Whitmer in his own records doesn't have something that hasn't been brought out. The notes themselves were assigned to the American Trust Company and I suppose that the attorneys who handled that transaction drew up this list which is Exhibit 3-C, and that might have been done after some closing of the matter when the people listed on Exhibit 3-C made a payment for their interest, but they didn't—then they were asked to execute Exhibit 2-B and, as I understand it, that is all that was done, and, if I were Edith Lamm, and somebody said to me, "Prove to me that you have a 12.157611 interest in these notes for which you paid \$25,000," I would say, "Well, here is my cancelled check. I signed Exhibit 2-B and the attorneys—some representatives of the bank listed my bank on 3-C and that is the evidence." Now, would that be [58] true?

Mr. Horrow: That is generally the evidence that any person of ownership in connection with the registration where the person doesn't have possession of the particular instrument, that is registered. In this case the notes were in the possession of the American Trust Company and the only evidence of ownership which any of these individuals had was

(Testimony of Francis E. Whitmer.)

the record of ownership maintained by the American Trust Company.

The Court: Who prepared Exhibit 3-C?

Mr. Horrow: I have no knowledge as to that, your Honor.

The Court: Do you know who prepared Exhibit 3-C, Mr. Whitmer?

The Witness: I have no direct knowledge on it. It was delivered to us. It was not prepared in our office.

The Court: Just one other question: If Edith Lamm sold W. E. Elliott her interest in the notes, what would happen as far as you were concerned under your duties?

The Witness: I will have to make the assumption of what we do because there were no changes of ownership, but——

The Court: There were no changes. That is an important fact. But I would ask you to describe what you would have done if there had been any changes in ownership and explain, give your reasons to show fully why you would have to do what you say you would do, because there are always practical [59] if not legal reasons for doing things in a certain way.

The Witness: The first evidence of it, I assume, would be some attempt at a transmittal to us of the assignment form showing that Edith Lamm had transferred her interest as evidenced by this list and by the document which she signed over to W. E. Elliott.

(Testimony of Francis E. Whitmer.)

The Court: Now, may I ask you another question there: If some evidence were not presented to you, you would continue to make interest payments to Edith Lamm, wouldn't you?

The Witness: Yes, and also capital.

The Court: Capital payments?

The Witness: Yes.

The Court: So that if W. E. Elliott wanted to receive payments from you he would have to send something or a letter to you, wouldn't he?

The Witness: Together with some kind of documentary evidence showing the transfer from the seller to him of the interest that he was buying.

The Court: All right, now. What would you have required of him to be on the safe side? The Court knows the Trustee was acting as judiciary capacity, have to be very careful. If anything goes wrong, they are liable for it, and the Trust Departments have counsel to advise them on all these things. Now, out of your experience, what would you have [60] required as manager of the Trust Department?

A. A document undertaking to assign the interest of the transferor to the transferee, which would have to satisfy ourselves, would be in sufficient form signed and preferably acknowledged or witnessed by someone whose signature would be acceptable to us.

The Court: Then that assignment form would have to be executed by whom?

The Witness: By the transferor.

(Testimony of Francis E. Whitmer.)

The Court: Edith Lamm?

The Witness: Yes. There are two Edith Lamms, one Mrs. and one Miss.

The Court: Well, we will call it Mrs. Edith Lamm.

The Witness: Then that document would have been put in our vault because it would be an important document. Then the signed counterpart of the letter which had been executed by Mrs. Lamm would be marked to show that her interest had been transferred by an assignment dated whatever the document might bear as date and received by us on another date over to the name of the transferee.

The Court: W. E. Elliott?

The Witness: W. E. Elliott. Then that would accomplish the fact that the documentary file would indicate that transfer. Then a memorandum would have originated from me to Mr. King who was in charge of the bookkeeping department, [61] indicating that by assignment bearing its date Mrs. Edith Lamm had transferred her interest in the Lamm Lumber Company indebtedness over to W. E. Elliott, indicating his address and that all future payments which heretofore would have been made to Mrs. Edith Lamm, by reason of her ownership, should hereafter be made to Mr. Elliott by reason of his ownership.

The Court: What would Mr. King do?

The Witness: Mr. King would take—let me make one more comment. I would have to indicate the

(Testimony of Francis E. Whitmer.)

change likewise, not only on the signed counterpart of the letter of instructions and agreement, but also on this list so that the operating legal file would at all times be correct.

The Court: Be something, in other words, to strike out Mrs. Edith Lamm's name entirely and substitute W. E. Elliott's share to—increasing his percentage interest also, is that right?

The Witness: That is right, and then Mr. King would have made the same change upon the copy that he kept in the Bookkeeping Department and would have had the girl who was the typist in charge of the physical work of making up those disbursements change her card also, showing that Mrs. Lamm was no longer an owner and Mr. Elliott's share had changed from 12 and a fraction per cent to 24 and a fraction per cent.

The Court: Now——

Mr. Horrow: If I can interject there, your Honor— [62] to whom would the payments be made after that change?

The Witness: To the transferee, Elliott, as to that proportion.

The Court: In other words, it was your duty, was it, to make payments only to people whose names appeared on this list of July 1, 1941, which is in evidence in this case as Exhibit 3-C?

The Witness: That is right. The copy that Mr. King kept in his department throughout the administration of the account was kept for that purpose.

(Testimony of Francis E. Whitmer.)

The Court: Is there anything else?

Mr. Horrow: That is all, your Honor.

Mr. Mather: I have a question or two.

Recross-Examination

By Mr. Mather:

Q. Mr. Whitmer, the only documentary evidence that was submitted to you to make the change on Exhibit 3-C, changing Alice McCourt Lamm, natural guardian, to trustee, were the two documents that are now in evidence, Petitioners' Exhibits 5 and 6, is that correct?

A. That is the letter that Mrs. Lamm wrote us, Alice McCourt Lamm telling us that she was a trustee.

Q. And this is 5 and 6?

A. This is the only change that was made except for change in addresses, Mr. Mather. [63]

Q. Those are the only documentary evidence you received in making the change that was made on Petitioners' Exhibit or on Exhibit 3-C?

A. That is right.

Mr. Mather: That is all.

The Court: What is your point there, Mr. Mather?

Mr. Mather: Well, a change was made and that was the documentary evidence that the bank received to make this change.

The Court: Well, how does——

The Witness: Give me an opportunity to explain that.

(Testimony of Francis E. Whitmer.)

The Court: How does that, in your opinion, differ from what Mr. Whitmer has testified to in answer to the Court's questions about how his department would handle an assignment of interest of any one of these original undivided interest-holders?

Mr. Mather: This wasn't an assignment from natural guardian to trustee. I don't know whether she was the natural guardian or she was the trustee. I don't know, but on the Exhibit 3-C that was submitted to the bank they were given a list of participants and their interest. A change was made to one of the participants to whom payment was made upon documentary evidence submitted to the bank, and that is the documentary evidence that was submitted to the bank upon which the change was made. It wasn't an assignment, I don't believe.

The Court: That is all. That is sufficient under [64] the—that is just that kind of a transaction.

Mr. Horrow: I think the witness can explain, your Honor, if I can ask a question or two.

The Court: I would say that Exhibit 6 speaks for itself. You may look at it. As I understand the situation, the list of those who held undivided interests in this indebtedness referred to Alice McCourt Lamm as the natural guardian for Winifred Carol Lamm and Alice McCourt Lamm notified the Trust Department of the American Trust Company that that was in error, that she was trustee and not a natural guardian and asked to have it corrected. Now, I suppose if the bank had wanted her to sub-

(Testimony of Francis E. Whitmer.)

mit more evidence than that letter it would have done so.

What light can you throw on the matter, Mr. Whitmer?

The Witness: Nothing more than the documents appear to offer when she executed the counterpart of a letter of instructions she described herself as natural guardian and then discovered that that wasn't what she meant and wrote us a letter and asked us to change that over to trustee, and indicated where she got the money, and then had the persons who deposited the money with her also approve that change and authorized us to make that change on her counterpart and on the list, which we did.

The Court: Well, Exhibit 5 is dated August 26.

The Witness: That is Mr. Brown's letter, Senior [65] Trust Officer's letter to her calling her attention to the manner of execution.

The Court: Then the letter of August 28, which was Exhibit 6, was sent in reply to Mr. Brown's letter, Exhibit 5, is that right?

The Witness: That is correct.

The Court: Is there anything else?

Mr. Mather: That is all.

Mr. Horrow: No further questions.

The Court: Thank you, Mr. Whitmer, for taking your time to come to give this testimony to the Court, and you are now excused.

(Witness excused.)

The dates for the briefs will be a little longer than is usually set under the rules, because of the holidays. The original briefs of both parties will be due on January 13, and the reply briefs will be due on February 13. Is that satisfactory?

Mr. Horrow: That is agreeable.

Mr. Mather: Yes.

The Court: That concludes the hearing in this proceeding.

(Whereupon, at 11:50 o'clock a.m., the hearing in the above-entitled matter was concluded.) [66]

Certificate

I, William Blashfield, one of the official reporters of The Tax Court of the United States under its reporting contract, assigned to report certain proceedings during the session of The Tax Court in San Francisco, beginning November 7, 1949, do hereby Certify as follows:

That I reported all of the proceedings in the case of Alice McCourt Lamm, et al., Petitioner, Dockets 21724, 21725, 21726, 22126, 22127, 22128, 22129, 22130, 22131, 22132, 22133, 22135, 22136, 22137, and 22138, on November 15, 1949, before the Honorable Marion J. Harron, Judge of The Tax Court;

That I did well and truly, to the best of my ability, record in Stenotypy fully, completely and accurately all of the proceedings which I was as-

signed to report, including all colloquy and statements made during the proceedings, and all questions to and answers given by witnesses;

That my stenotype record is full, complete and accurate; and

That the foregoing record is a true, complete and accurate transcript of my stenotype notes of all the proceedings which I reported, and all of the testimony which was taken in the above-entitled cause.

WILLIAM F. BLASHFIELD,
Recorder.

Filed T. C. U. S. December 12, 1949.

The Tax Court of the United States
T.C. No. 44

ALICE McCOURT LAMM, et al.,¹
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket Nos. 21724, 21725, 21726, 22126, 22127,
22128, 22129, 22130, 22131, 22132, 22133,
22635, 22636, 22637, 22638.

Promulgated September 26, 1950.

FINDINGS OF FACT AND OPINION

Petitioners and others purchased as an investment certain past due notes of a corporation at less

than face value and caused them to be transferred to a Trust Company which, pursuant to an agreement, collected payments made by the debtor and distributed them, less charges, to the purchasers pro rata. The Trust Company maintained the official list of the owners with their addresses and percentage shares and required that any transfer of an interest be evidenced by the filing of an assignment. The debtor paid part of the fee of the Trust Company. Held: The notes were not "in registered form," within the meaning of section 117(f), I.R.C., and the petitioners' gains upon retirement of the notes were not capital gains.

Harry R. Horrow, Esq., and Francis N. Marshall, Esq., for the petitioners.

T. M. Mather, Esq., for the respondent.

The respondent has determined deficiencies in income and victory tax for the year 1943, in each of the proceedings which were consolidated for trial and consideration by the Court, as follows:

¹Consolidated with the proceeding of Alice McCourt Lamm, Docket No. 21724, are the following: Estate of W. E. Lamm, Deceased, Docket No. 21725; Winifred Carol Lamm, Docket No. 21726; Estate of Edith E. Lamm, Deceased, Docket No. 22126; Edith Lamm, Docket No. 22127; Ethel Fisher, Docket No. 22128; Estate of Chas. C. Elliott, Deceased, Docket No. 22129; Estate of Eugene D. Elliott, Deceased, Docket No. 22130; Bess Kent, Docket No. 22131; Joseph S. Kent, Docket No. 22132; Rolland G. Watt and Adele C. Watt, Docket No. 22133; Elsa Ehlers, Docket No. 22635; William E. Elliott, Docket No. 22636; H. Edwin Nowell, Docket No. 22637; and Elizabeth V. Nowell, Docket No. 22638.

Docket No.	Petitioner	Amount of Deficiency
21724	Alice McCourt Lamm	\$4,246.73
21725	Estate of W. E. Lamm, Deceased.....	9,345.83
21726	Winifred Carol Lamm	2,472.21
22126	Estate of Edith E. Lamm, Deceased.....	7,393.25
22127	Edith Lamm	7,487.07
22128	Ethel Fisher	7,012.02
22129	Estate of Chas. C. Elliott, Deceased.....	1,599.01
22130	Estate of Eugene D. Elliott, Deceased.....	1,164.99
22131	Bess Kent	508.54
22132	Joseph S. Kent	437.34
22133	Rolland G. Watt and Adele C. Watt.....	8,478.60
22635	Elsa Ehlers	5,863.86
22636	William E. Elliott	7,292.33
22637	H. Edwin Nowell	261.80
22638	Elizabeth V. Nowell	261.77

Each of the petitioners owned participating interests in notes of the Lamm Lumber Company. In 1943 the notes were retired upon payment of the balance of the principal and interest due thereon; and each of the petitioners realized gains upon the retirement of the notes in amounts proportional to his fractional ownership thereof. Each of the petitioners reported in his return for 1943 the gain realized as long-term capital gain, of which 50 per cent was reported as income. The petitioners contend that the notes in question come within the provisions of section 117(f) of the Internal Revenue Code. The respondent has determined that the notes in question did not come within the provisions of section 117(f) and that, therefore, the gains were taxable as ordinary income rather than as long-term capital gains. The only question to be decided is whether the notes in question came within the scope of section 117(f). The question is common

to all of the proceedings which have been consolidated.

The petitioners filed their income and victory tax returns for the year 1943 with the collectors for the appropriate districts as set forth in the margin.²

Findings of Fact

The facts which have been stipulated are found as facts, and the stipulation is incorporated herein by this reference.

Lamm Lumber Company, a corporation, issued two promissory notes, one dated May 6, 1930, in the principal sum of \$150,000, and one dated September 5, 1930, in the principal sum of \$250,000, both payable to the order of Consolidated Securities Company, hereinafter referred to as "Consolidated," in consideration of loans. Each of these notes was secured by a mortgage on a certain railroad owned by Lamm Lumber Company. On May 26 and September 30, 1930, Consolidated executed respective declarations of trust that it held these notes, mortgages and options for the benefit of Southern Pacific Land Company. Until July 1, 1941, Southern Pacific Land Company was the beneficial owner thereof.

From March 5, 1932, to September 5, 1934, various additional notes were issued by Lamm Lumber

²Docket Nos. 21724, 21725, and 21726, filed with the collector for the District of Oregon; Docket Nos. 22126, 22127, 22128, 22129, 22130, 22635, and 22636, filed with the collector for the Sixth District of California; and Docket Nos. 22131, 22132, 22133, 22637, and 22638, filed with the collector for the First District of California.

Company to Consolidated representing unpaid interest on said corporate indebtedness. On December 24, 1936, Lamm Lumber Company and Consolidated entered into a supplementary agreement compromising the unpaid interest as to its amount, funding the interest and accruals to January 1, 1938, by adding them to the principal, restating the new principal at January 1, 1938, as \$497,845, and providing for interest from January 1, 1938, at 3 per cent. Lamm Lumber Company covenanted to pay monthly \$5 for each car of logs shipped over the railroad with minimum payments of \$15,000 a year until December 31, 1941, and \$35,000 a year thereafter.

On February 8, 1940, Consolidated endorsed all the notes to The Anglo California National Bank of San Francisco, without recourse, and assigned to that bank its rights as mortgagee. Lamm Lumber Company paid \$250 per year service charges to The Anglo California National Bank.

From February 10, 1938, to June 11, 1941, Lamm Lumber Company made various payments on the debt, so that as of June 12, 1941, the sum owing by Lamm Lumber Company thereon was \$411,264.99. All the notes were then on their face past due.

Southern Pacific Land Company was desirous of liquidating its lumber interests in Northern California and Oregon and let it be known that it would be willing to sell its interest in the Lamm Lumber Company notes at a substantial discount. In order to avail themselves of the investment opportunity, certain individuals, including petitioners herein

(petitioners' decedents in the cases of the four estates) each on his or her own behalf, offered to purchase undivided fractional interests in the notes, making in total 100 per cent of the ownership of said notes. These offers were presented to Southern Pacific Company (parent company of Southern Pacific Land Company) on behalf of Southern Pacific Land Company as an offer to purchase the notes for 50 per cent of the balance of the principal of the loan plus the interest currently due at the time of the completion of the purchase. Such offer was accepted, and on July 1, 1941, the individuals paid over to the Southern Pacific Land Company the sum of \$206,388.55, and the beneficial ownership of the notes and mortgages was transferred from Southern Pacific Land Company to the individuals in proportion to their undivided fractional interests.

The purchasers, as beneficial owners of undivided fractional interests in the notes, entered into a written agreement called "Instructions and Agreement," dated July 15, 1941, with American Trust Company, hereinafter referred to as "Trust Company." Each individual signed a counterpart of the agreement stating his or her percentage interest. Also, a list was made of the names, addresses, amounts invested, and percentage interests of the aforesaid beneficial owners which was given to the Trust Company.

Pursuant to the Instructions and Agreement, the notes were endorsed and mortgages assigned to Trust Company to hold and keep in its possession.

The Instructions and Agreement described the

obligation of the Lamm Lumber Company and the document's evidencing it, directed Trust Company to hold certain documents as agent for the joint owners of the notes, and further provided, in part:

You are to receive for the account of the undersigned and as their Agent such payments on account of interest and principal as may be made to you from time to time by Lamm Lumber Company. *** On or within a reasonable time after the 10th day of each September, December, March and June, you are to remit to each of the undersigned a check for his share of the interest payments and separate check for his share of the principal payments, less your charges.

You shall have no duty to take any steps to enforce the collection of said obligation, nor to prevent it or any part of it or any of the notes, mortgages, agreements, or other documents evidencing or modifying it, from outlawing, nor to take any action of any other kind other than as herein specifically set forth, except upon the written instructions of the persons who, at the time, shall be the owners in the aggregate of 75% or more of the entire interest in said obligation, and after the furnishing to you of such indemnity as you shall require, any and all action taken by you pursuant to such instructions shall be your complete acquittance relative thereto.

You shall not be responsible or liable in any manner whatever for the sufficiency, genuineness, or validity of said obligation, or the Mortgages securing the same, or the agreements or assignments, or other documents or instruments, affecting them or

it, or with the respect to their form or execution. You shall be fully protected in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by you to be genuine and to be signed by the proper party or parties. You may advise with legal counsel in the event of any dispute or question as to the construction of these instructions, or your duties thereunder, and you shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel.

* * *

The undersigned agree jointly and severally to indemnify and hold you harmless for all taxes, expenses, costs, demands, claims and liabilities of every kind and character arising out of or in connection with these instructions and the property held hereunder.

All rights and obligations of the undersigned hereunder shall inure to and be binding on their successors in interest which term shall include their heirs, assigns and personal representatives.

You shall not be bound to take notice of any change in the ownerships of the interests of any of the undersigned unless and until there shall have been filed with you such documentary evidence as you shall consider necessary to establish such change.

These instructions may be terminated at any time by the then holders of 100% of the interest in said obligation, but not otherwise. In such event, after the payment or provisions for your compensation

and other charges, the property then held hereunder shall be returned to the undersigned, or their successors in interest, or their order.

When there shall have been paid to you by or on behalf of Lamm Lumber Company in lawful money of the United States sums totaling \$411,264.99, plus simple interest on the decreasing balances at the rate of 3% per annum, you are authorized to cancel all of the notes held by you hereunder, and to return them to Lamm Lumber Company and to execute and deliver to it any and all releases, satisfactions, and other instruments necessary or desirable to evidence the extinguishment of its said obligation.

These instructions may be signed in any number of counterparts with the same effect as though they were one and the same document. They shall not become effective for any purpose unless and until they have been signed by the owners of 100% of the interests in said obligation.

Dated as of July 15, 1941.

The owners of the undivided interests in the notes, the amount which each paid for his or her undivided interest, and the percentage of the total interest which each owned are as follows:

Name	Participation by Each of a Total Sum of \$205,632.50	Percentage of the Total Interest and Principal Belonging to Each
Mrs. Edith Lamm	\$25,000	12.157611
Miss Edith Lamm	25,000	12.157611
Ethel Fisher	25,000	12.157611
W. E. Elliott	25,000	12.157611
Elsa Natalie	20,000	9.726089
W. E. Lamm	16,500	8.024023
R. G. Watt	15,000	7.294567
Alice McCourt Lamm.....	12,000	5.835653
Trustee for Winifred Carol Lamm		

Chas. C. Elliott	8,500	4.133588
Alice McCourt Lamm	8,000	3.890436
E. D. and Beth L. Elliott.....	7,000	3.404131
Joint Tenants		
Joseph S. Kent	5,000	2.431522
H. Edwin Nowell	2,632.50	1.280197
Everitt A. and Lorraine M. Hill	2,000	.972609
Joint Tenants		
C. E. & Manila McClung Matkin	2,000	.972609
Joint Tenants		
S. E. and Ann J. Rife.....	2,000	.972609
Joint Tenants		
W. A. and Edna S. Spangler.....	2,000	.972609
Joint Tenants		
S. W. and Alta J. Egeline.....	2,000	.972609
Joint Tenants		
A. G. Hammond	1,000	.486305
Total.....	\$205,632.50 ³	100.000000

In accordance with the Instructions and Agreement, Trust Company duly remitted collections of interest and principal paid to it by Lamm Lumber Company to those owners shown to be entitled thereto. During this period, none of the individuals sold or exchanged his or her undivided fractional interest in the notes.

Trust Company's charges for its services in collecting and remitting interest and principal payments and in maintaining a record of ownership were shared by the participating owners of record and by Lamm Lumber Company in the following manner: Trust Company charges the sum of \$500 as an acceptance fee, an annual fee of \$100 plus 1/10

³The total amount paid to Southern Pacific Land Company was \$206,388.55. This was slightly in excess of the total amount of the consideration paid by the owners of interests who paid \$205,632.50. The discrepancy is not explained.

of 1 per cent of the unpaid balance of the obligation at the beginning of each year, and \$250 as a closing fee, plus reimbursement for out-of-pocket expenses. Of these charges Lamm Lumber Company agreed by letter dated August 26, 1941, to Trust Company, to pay sums at the rate of \$250 per annum which were credited against the foregoing total charges.

On December 7, 1943, the notes were retired by payment of the balance of the principal and interest due thereon. During the year 1943 petitioners realized gains on the retirement of the notes in amounts proportionate to their fractional ownership thereof.

The Trust Company's procedure in carrying out its duties under the agreement was as follows: A memorandum of instructions was furnished to employees handling the account. The original list of owners of interests was placed in the Trust Company's documentary file. A copy was furnished the bookkeeping department. A card list was prepared and maintained showing the names and addresses of the participants, their percentage shares, and the dates when payments were expected for distribution. On receipt of any installment payment the bookkeepers computed the amount of interest and posted that on a cash ledger sheet, the balance being posted as principal. A computation was then made of the amount of principal and interest to be apportioned to each of the owners on the list and checks were prepared, one for interest and one for princi-

pal, for payment to each of the owners of interests. A statement was prepared for each participant showing the total amount received, the amount divided among the participants and the balance of the principal remaining due. The notes were held by the Trust Company until final payment was received after which they were marked "canceled" and returned to the debtor.

There were no transfers of interests by the owners of the Lamm Lumber Company notes; but had a transfer been made, the Trust Company would have required notice of such transfer and the filing of an assignment, properly witnessed or acknowledged, before remitting any proceeds to the transferee and would have changed its card record and list of owners accordingly, and would have marked the signed counterpart of the agreement to show the transfer.

The Trust Company also acts as a registrar for some issues of corporate securities. In such cases it maintains a card record showing the name of the debtor corporation and the name and address of the registered owner, the card also showing transfers and cancellations and giving a history of the ownership of the particular security.

Opinion

Harron, Judge: The only question in these proceedings is whether the notes of Lamm Lumber Company were in registered form within the mean-

ing of section 117(f) of the Internal Revenue Code.⁴

On and after May 6, 1930, Lamm Lumber Company gave its notes in exchange for loans to Consolidated Securities Company. The petitioners conceded the fact that none of the notes were registered notes at the time of issuance. The narrow question presented is whether the notes were "in registered form" after the petitioners purchased undivided interests in them in 1941.

The evidence in these proceedings is clear on the point that the debtor, Lamm Lumber Company, did not at any time take back any of the notes and re-issue registered notes in place of the original unregistered notes. Section 117(f) refers to the retirement of notes, bonds, debentures, certificates or other evidences of indebtedness issued by any corporation with interest coupons or in registered form. We understand the wording of section 117(f) to refer to evidence of indebtedness which is put into registered form by a debtor-corporation, and that one of the requirements of section 117(f) is that the evidence of indebtedness be put in registered form by the debtor if the retirement of the in-

⁴Sec. 117. Capital Gains and Losses.

* * *

(f) Retirement of Bonds, Etc.—For the purposes of this chapter, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

debtedness is to be recognized as an exchange so that gain or loss shall be treated as capital gain or loss.

The petitioners have based their contention that the gains which they realized upon the payment of the notes should be treated as capital gains because of the arrangements which they made with the American Trust Company under the agreement of July 15, 1941. That is to say, the petitioners appear to take the view that the notes were "in registered form" because of the records which were kept for purposes of distributions to them and because any transfers of their respective interests had to be recorded by their agent.

We are unable to agree with the petitioners that the debtor-corporation ever placed the notes in question in registered form. The Lamm Lumber Company was not a party to the agreement with American Trust Company and we think that it involves too strained a construction of the facts to conclude that the agreement between the petitioners and the American Trust Company operated in some way to effect a registration of the notes by the Lamm Lumber Company. The Lamm Lumber Company did not maintain any register of the notes, or of the owners, or of the payments to the owners of undivided interests. The American Trust Company was not an agent of the Lamm Lumber Company. Instead, it was an agent of the petitioners who had purchased the notes at a discount. They appointed the American Trust Company as their agent to receive payments of principal and interest on the notes for them, and to make distributions thereof to them. The

records which the American Trust Company which were kept for the purposes of acting as a collecting and disbursing agent are not the kind of register which satisfies the requirements of section 117(f). Since we cannot agree with the petitioners that the requirements of section 117(f) are satisfied in these proceedings by virtue of the records which the petitioners had their own agents establish, we must sustain the respondent's determination.

The petitioners rely upon *Lurie v. Commissioner*, 156 Fed. (2d) 436, reversing 4 T.C. 1065; and other cases. All of the authorities which have been cited have been considered. In the *Lurie* case, as shown by the Findings of Fact and Opinion of this Court, *supra*, notes were taken back by a corporation and were reissued in the form of registered notes. The debtor-corporation registered the evidences of its indebtedness. That was not the fact with respect to the notes which are involved here. Therefore, we believe that this proceeding is distinguishable from the *Lurie* case.

It is held that the notes of Lamm Lumber Company were not "in registered form" within the requirements of section 117(f) of the Code at any time, either before or after the petitioners acquired their interests therein. The respondent's determinations are sustained.

Reviewed by the Court.

Decisions will be entered for the respondent.

The Tax Court of the United States
Washington

Docket No. 21724

ALICE McCOURT LAMM,

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion promulgated on September 26, 1950, it is

Ordered and Decided: That there is a deficiency in income and victory tax for the year 1943 in the amount of \$4,246.73.

[Seal] /s/ MARION J. HARRON,
Judge.

Entered Sep. 26, 1950.

Served Sep. 26, 1950.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 21724

ALICE McCOURT LAMM,

Petitioner on Review,

vs.

GEORGE J. SCHOENEMAN, Commissioner of
Internal Revenue,

Respondent on Review.

PETITION FOR REVIEW

To The Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Now comes Alice McCourt Lamm, by and through her attorneys Harry R. Horrow, Esq., Farncis N. Marshall, Esq., and Claude H. Hogan, Esq., and respectfully shows:

I.

Jurisdiction

The petitioner on review, Alice McCourt Lamm, hereinafter referred to as the "taxpayer," is a resident of Modoc Point, Oregon. The respondent on review, George J. Schoeneman, hereinafter referred to as the "Commissioner," is the duly appointed, qualified and acting Commissioner of Internal Revenue.

The federal income and victory tax return of taxpayer for the calendar year 1943 was filed with the Collector of Internal Revenue for the District of Oregon, whose office is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought. Your petitioner seeks a review of the decision of the Tax Court of the United States pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code as amended.

II.

Prior Proceedings

On November 26, 1948, the Commissioner determined a deficiency in income and victory tax for the calendar year 1943 in the amount of \$4,246.73 and sent to the taxpayer by registered mail a notice of said deficiency. Thereafter on February 7, 1949, and within the time prescribed by law, the taxpayer filed a petition with the Tax Court of the United States seeking a redetermination of said deficiency and alleging that there was no deficiency in income tax due from the taxpayer for the year 1943. On or about April 22, 1949, the Commissioner filed his answer to said petition. By order of the Tax Court dated November 15, 1949, this case was consolidated with the cases of other taxpayers whose petitions for review are being filed concurrently herewith. These cases were heard before a division of the Tax Court at San Francisco, California, on November 15, 1949. The Tax Court promulgated its opinion

and entered its decision on September 26, 1950, ordering and deciding that there is a deficiency in income and victory tax for the year 1943 in the amount of \$4,246.73.

III.

Nature of Controversy

Taxpayer was during the calendar year 1943 the owner of an undivided interest in certain notes of the Lamm Lumber Company, an Oregon corporation, which was purchased by her for investment at 50 per cent of its face value. These notes were retired by the Lamm Lumber Company by a payment at full face value on December 7, 1943, and taxpayer thereby realized a gain upon said retirement, represented by the difference between the amount paid for her interest in said notes and the amount received by her. There is no dispute as to the amount of the gain. The sole issue herein presented is whether the gain is taxable as ordinary income, as determined by the Tax Court, or as capital gain, as contended by taxpayer. That issue involves the construction of section 117(f) of the Internal Revenue Code and whether said notes of the Lamm Lumber Company were "in registered form" within the meaning of section 117(f) of the Internal Revenue Code at the time of their retirement. The Tax Court held that the notes were not "in registered form" within the meaning of section 117(f) and that the taxpayer's gain upon the retirement of the notes was not capital gain. If said

notes were "in registered form" within the meaning of section 117(f), said gain is capital gain as contended by taxpayer.

IV.

Assignments of Error

Taxpayer alleges that the Tax Court erred in the following respects:

1. The Tax Court erred in holding that the notes of Lamm Lumber Company were not "in registered form" at the time of their retirement within the meaning of section 117(f) of the Internal Revenue Code.

2. The Tax Court erred in holding that said notes were not "in registered form" within the meaning of said section unless they were issued or reissued in registered form by Lamm Lumber Company.

3. The Tax Court erred in holding that the ownership of the notes of Lamm Lumber Company was not evidenced by a register within the provisions of section 117(f) of the Internal Revenue Code.

4. The Tax Court erred in holding that the agreement of July 15, 1941, with the American Trust Company did not result in the registration of said notes within the provisions of section 117(f) of the Internal Revenue Code.

5. The Tax Court erred in holding that the

Lamm Lumber Company was not a party to said agreement.

6. The Tax Court's holding that American Trust Company was not an agent of Lamm Lumber Company is unsupported by its findings of fact and is erroneous.

7. The Tax Court erred in failing to hold that the notes of Lamm Lumber Company were "in registered form" at the time of their retirement within the meaning of section 117(f) of the Internal Revenue Code.

8. The Tax Court erred in failing to hold that the taxpayer realized a capital gain on the retirement of the notes of Lamm Lumber Company for the year 1943.

9. The Tax Court erred in holding that the taxpayer realized ordinary income on the retirement of the notes of Lamm Lumber Company.

10. The Tax Court erred in determining that there was a deficiency in income and victory tax for the taxpayer for the calendar year 1943 in the amount of \$4,246.73, and in failing to hold that there was no deficiency in said taxes for said year.

11. The Tax Court erred in deciding contrary to law and without support in its findings of fact and the evidence.

Wherefore, petitioner asks that the decision and order of the Tax Court be reversed by the United States Court of Appeals for the Ninth Circuit and

that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the clerk of said court for filing and that appropriate action be taken to the end that the errors complained of may be reversed and corrected by said court.

Dated: San Francisco, California, December 19, 1950.

/s/ HARRY R. HORROW,

/s/ FRANCIS N. MARSHALL,

/s/ CLAUDE H. HOGAN,

Attorneys for Petitioner.

PILLSBURY, MADISON &

SUTRO,

Of Counsel.

Filed T.C.U.S. December 26, 1950.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To George J. Schoeneman, Commissioner of Internal Revenue, Washington, D. C.:

You are hereby notified that Alice McCourt Lamm did on the 26th day of December, 1950, file with the clerk of the Tax Court of the United States, in Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Cir-

cuit of a decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated: San Francisco, California, December 19, 1950.

/s/ HARRY R. HORROW,

/s/ FRANCIS N. MARSHALL,

/s/ CLAUDE H. HOGAN,

Attorneys for Petitioner
On Review.

PILLSBURY, MADISON &
SUTRO,
Of Counsel.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of error mentioned therein, is hereby acknowledged this 26th day of December, 1950.

/s/ CHARLES OLIPHANT, JR.,

Attorney for Respondent
On Review.

Filed T.C.U.S. December 26, 1950.

[Title of Court of Appeals and Cause.]

Tax Court Docket Nos. 21724, 21725, 21726, 22126, 22127, 22128, 22130, 22131, 22132, 22133, 22635, 22636, 22637 and 22638.

ORDER

Motion for preparation of the records on review in the above causes and the printing thereof having been made by counsel for the above-named petitioners on review and consented to by counsel for the above-named respondent on review:

It is hereby Ordered:

1. That the certified records to be prepared by the clerk of the Tax Court of the United States in the above cases shall be made upon separate designations for record on review in the usual course and that a complete transcript of record be filed only in the case of *Alice McCourt Lamm v. George J. Schoeneman*, Commissioner of Internal Revenue, T. C. Docket No. 21724, which shall include, inter alia, a copy of the findings of fact and opinion of the Tax Court of the United States in the consolidated causes, a copy of the stipulation of facts together with exhibits attached, filed in the consolidated causes, a copy of the entire transcript of hearing on November 15, 1949, at San Francisco, California, in the consolidated causes, a copy of each of the exhibits introduced in evidence in the consolidated causes, or the original of any exhibit if physical transmission of such exhibit be ordered,

and a copy of the order entered hereon by this court; and that an abbreviated record be filed in all the remaining cases herein, bearing Docket Nos. 21725, 21726, 22126, 22127, 22128, 22129, 22130, 22131, 22132, 22133, 22635, 22636, 22637 and 22638, which shall contain only the following documents: docket entries, petition and answer, order of the Tax Court substituting party petitioner, if any, decision of the Tax Court, petition for review and assignment of errors, notice of filing petition for review, and the designation of the record;

2. That all the cases be docketed in the usual order, but that only the complete record relating to the case of *Alice McCourt Lamm v. George J. Schoeneman*, Commissioner of Internal Revenue, T. C. Docket No. 21724 (including any subsequent documents filed in this case prior to printing), shall be printed and that only said case shall be briefed and presented to the court in argument for decision, but that the matters contained in the abbreviated records of the related cases herein may be referred to by counsel in their respective briefs filed herein and on oral arguments and considered by the court with the same force and effect as if included in the printed record on review herein;

3. That the abbreviated records in the cases bearing T. C. Docket Nos. 21725, 21726, 22126, 22127, 22128, 22129, 22130, 22131, 22132, 22133, 22635, 22636, 22637 and 22638 remain unprinted in the office of the clerk of the reviewing court herein

and that further proceedings thereon be suspended until the judgment of this court is entered in the case of Alice McCourt Lamm v. George J. Schoeneman, Commissioner of Internal Revenue, T. C. Docket No. 21724. Upon the entry of said judgment this court will order similar judgments entered in the causes bearing T. C. Docket Nos. 21725, 21726, 22126, 22127, 22128, 22129, 22130, 22131, 22132, 22133, 22635, 22636, 22637, and 22638;

4. That the clerk of this court transmit two certified copies of this order to the clerk of the Tax Court of the United States at Washington 25, D. C., one of which is to be incorporated by him in the transcript of record on review in the case of Alice McCourt Lamm v. George J. Schoeneman, Commissioner of Internal Revenue, T. C. Docket No. 21724, as certified and transmitted to this court.

Done this 19th day of January, 1951.

WILLIAM DENMAN,
Judge.

ALBERT LEE STEPHENS,
Judge.

WILLIAM E. ORR,
Judge.

A true copy.

Filed T.C.U.S. January 24, 1951.

[Title of Court of Appeals and Cause.]

ORDER FOR PHYSICAL TRANSMISSION
OF EXHIBIT

Upon the stipulation of petitioner and respondent on file herein, and for good cause appearing therefor, it is hereby Ordered that the original of Petitioner's Exhibit No. 8 be incorporated by the Clerk of the Tax Court in the transcript of record on review on this case as certified and transmitted to this court, and that the Clerk of this court transmit two certified copies of this order to the Clerk of the Tax Court of the United States, one of which is to be incorporated by him in the transcript of record on review in this case as certified and transmitted to this court.

Dated: San Francisco, California, January 19, 1951.

WILLIAM DENMAN,

ALBERT LEE STEPHENS,

WILLIAM E. ORR,

Judges of the United States Court of Appeals for
the Ninth Circuit.

A true copy.

Filed T.C.U.S. January 24, 1951.

[Title of Tax Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit copies duly certified as correct of the entire record in the above-entitled cause, in connection with the petition for review heretofore filed by Alice McCourt Lamm, including the following documents and records:

1. Docket entries of all proceedings before the Tax Court;

2. All pleadings before the Tax Court, including the following:

(a) Petition, including Exhibit A attached thereto;

(b) Request for place of hearing;

(c) Answer; and

(d) Joint motion for consolidation of proceedings;

3. Order of Tax Court granting motion to consolidate proceedings;

4. Stipulation of facts;

5. The entire transcript of hearing November 15, 1949, at San Francisco, California; and

6. All the exhibits in said cause, being:

(a) Petitioner's Exhibit No. 1-A, promissory

notes and mortgage executed by Lamm Lumber Company;

(b) Petitioner's Exhibit No. 2-B, instructions and agreement of noteholders with American Trust Company;

(c) Petitioner's Exhibit No. 3-C, list of owners of notes indicating their fractional interests therein;

(d) Petitioner's Exhibit No. 4-D, letter dated August 26, 1941, addressed to American Trust Company by Lamm Lumber Company;

(e) Petitioner's Exhibit No. 5, copy of letter addressed by the American Trust Company to Alice McCourt Lamm;

(f) Petitioner's Exhibit No. 6, copy of letter dated August 28, 1941, addressed by Alice McCourt Lamm to the American Trust Company;

(g) Petitioner's Exhibit No. 7, copy of internal memorandum of the American Trust Company dated August 27, 1941; and

(h) Original of petitioner's Exhibit No. 8, specimen form of bond of California-Oregon Power Company;

7. Findings of fact and opinion of the Tax Court;

8. Decision of the Tax Court;

9. Petition for review;

10. Notice of filing petition for review;

11. This designation of contents of record on review;

12. Order of United States Court of Appeals for the Ninth Circuit consolidating cases on appeal and directing filing of abbreviated records in certain cases; and

13. Order of United States Court of Appeals for the Ninth Circuit, if any, directing physical transmission of any exhibit as part of the record on review.

/s/ HARRY R. HORROW,

/s/ FRANCIS N. MARSHALL,

/s/ CLAUDE H. HOGAN,

Attorneys for Petitioner.

PILLSBURY MADISON &

SUTRO,

Of Counsel.

Service acknowledged.

Filed T.C.U.S. January 16, 1951.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States do hereby certify that the foregoing documents, 1 to 15, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation as to Contents of Record on Review" in the proceedings before the Tax Court of the United States entitled: "Alice McCourt Lamm, Petitioner, v. Commissioner of Internal Revenue, Respondent,"

Docket No. 21724, and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 25th day of January, 1951.

/s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12828. United States Court of Appeals for the Ninth Circuit. Alice McCourt Lamm, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcription of the Record. Petition to Review a Decision of the Tax Court of the United States.

Filed January 29, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket 21724

ALICE McCOURT LAMM,

Petitioner on Review,

vs.

GEORGE J. SCHOENEMAN, Commissioner of
Internal Revenue,

Respondent on Review.

STIPULATION FOR CONSIDERATION OF
EXHIBIT IN FORM AS CERTIFIED

Alice McCourt Lamm, Petitioner, and George J. Schoeneman, Commissioner of Internal Revenue, Respondent, upon the petition on file herein for review of the decision of the Tax Court of the United States, hereby stipulate that petitioner's Exhibit No. 8, specimen form of bond of California-Oregon Power Company, need not be printed as part of the record, but may be considered in the form certified by the Clerk of the Tax Court of the United States, and in such form shall constitute a part of the record on review.

Said exhibit is voluminous and cannot feasibly be reproduced by printing, and for that reason the

printing of said exhibit should be dispensed with.

Dated: December 29, 1950.

/s/ HARRY R. HORROW,

/s/ FRANCIS N. MARSHALL,

/s/ CLAUDE H. HOGAN,

Attorneys for Petitioner.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Attorneys for Respondent.

[Endorsed]: Filed U.S.C.A. January 19, 1951.

[Title of Court of Appeals and Cause.]

ORDER FOR CONSIDERATION OF EXHIBIT
IN FORM AS CERTIFIED

Upon the stipulation of petitioner and respondent on file herein, and for good cause appearing therefor, it is hereby Ordered that Petitioner's Exhibit No. 8 need not be printed as part of the record but may be considered in the form certified by the Clerk of the Tax Court of the United States, and in such form shall constitute a part of the record on appeal.

Dated: San Francisco, California, January 19, 1951.

/s/ WILLIAM DENMAN,

/s/ ALBERT LEE STEPHENS,

/s/ WM E. ORR,

Judges, U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed U.S.C.A. January 19, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

Alice McCourt Lamm, Petitioner herein, makes the following statement of the points on which she intends to rely upon the petition for review herein:

1. The Tax Court erred in holding that the notes of Lamm Lumber Company were not "in registered form" at the time of their retirement within the meaning of section 117(f) of the Internal Revenue Code.

2. The Tax Court erred in holding that said notes were not "in registered form" within the meaning of said section unless they were issued or reissued in registered form by Lamm Lumber Company.

3. The Tax Court erred in holding that the ownership of the notes of Lamm Lumber Company was not evidenced by a register within the provisions of section 117(f) of the Internal Revenue Code.

4. The Tax Court erred in holding that the agreement of July 15, 1941, with the American Trust Company did not result in the registration of said notes within the provisions of section 117(f) of the Internal Revenue Code.

5. The Tax Court erred in holding that the Lamm Lumber Company was not a party to said agreement.

6. The Tax Court's holding that American Trust Company was not an agent of Lamm Lumber Company is unsupported by its findings of fact and is erroneous.

7. The Tax Court erred in failing to hold that the notes of Lamm Lumber Company were "in registered form" at the time of their retirement within the meaning of section 117(f) of the Internal Revenue Code.

8. The Tax Court erred in failing to hold that the taxpayer realized a capital gain on the retirement of the notes of Lamm Lumber Company for the year 1943.

9. The Tax Court erred in holding that the taxpayer realized ordinary income of the retirement of the notes of Lamm Lumber Company.

10. The Tax Court erred in deciding contrary to law and without support in its findings of fact and the evidence.

Dated, San Francisco, California, February 5, 1951.

/s/ HARRY R. HORROW,

/s/ FRANCIS N. MARSHALL,

/s/ CLAUDE H. HOGAN,

Attorneys for Petitioner
On Review.

[Endorsed]: Filed U.S.C.A. February 6, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD
NECESSARY FOR CONSIDERATION

Alice McCourt Lamm, Petitioner herein, designates as necessary for the consideration of the points relied on:

1. The whole of the record certified by the Clerk of the Tax Court of the United States;
2. Stipulation for consideration of exhibit in form as certified;
3. Order for consideration of exhibit in form as certified.

Dated, San Francisco, California, February 5, 1951.

/s/ HARRY R. HORROW,

/s/ FRANCIS N. MARSHALL,

/s/ CLAUDE H. HOGAN,

Attorneys for Petitioner
On Review.

[Endorsed]: Filed U.S.C.A. February 6, 1951.